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**Statutes of the
state of South
Dakota (2d rev.
ed.) embracing
the general ...**

South Dakota

155
Bd. July 1930



HARVARD LAW LIBRARY

Received Nov. 4, 1901

STATUTES^{of}

OF THE

STATE OF SOUTH DAKOTA

(SECOND REVISED EDITION)

EMBRACING THE

GENERAL LAWS IN FORCE JAN. 1, 1901

WITH

Digested Notes of Judicial Decisions Construing the Law
and a Digest of the Laws Passed by
the Legislature of 1901

IN TWO VOLUMES

COMPILED AND ANNOTATED

By EDWIN L. GRANTHAM

OF THE CUSTER COUNTY BAR

VOLUME ONE

ALBANY

H. B. PARSONS

1901

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BY

EDWIN L. GRANTHAM

Rec. Nov. 4, 1901

**AN ACT Declaring the "Statutes of the State of South Dakota"
Admissible as Evidence of the General Statutes of the State of South
Dakota.**

Be it enacted by the Legislature of the State of South Dakota:

Section 1. That the "Statutes of the State of South Dakota" edited and compiled by Edwin L. Grantham, and published by E. B. Myers & Co., of Chicago, Illinois, and all revisions thereof, are hereby declared to be admissible in all courts of this State as legal evidence of the statutes therein contained.

Provided, that this declaration shall not preclude reference to the Revised Codes of 1877, the Compiled Laws of 1887 or to any of the acts of the Legislative Assembly of the Territory of Dakota, or to the Session Laws of the State of South Dakota; nor to prevent their control in case of any discrepancy between said statutes of South Dakota and such Codes and Session Laws.

Approved February 21, 1899.

P R E F A C E

In the preparation of this work it has not been the purpose to afford a treatise on the statute law of South Dakota. If the many months of arduous labor devoted by the editor to its compilation and annotation result in a satisfactory work of general utility, all expectations will be fully met.

It has been the purpose to give the law of our state: From the compiled laws, 1887; special laws passed prior thereto which have been made general by subsequent acts; the succeeding session laws of 1889, 1890, 1891, 1893, 1895 and 1897, and the constitution of the State of South Dakota, together with a complete digest of the decisions of the state and territorial courts either construing or explaining a law or declaring its opinion upon a subject therein contained.

That there are inconsistencies in the laws, and conflicts with the constitution, is apparent. As a compiler, without authority to revise, there was but one rule to be followed with safety — to carry such conflicting and inconsistent laws unless clearly and unquestionably repealed or abrogated.

Owing to the familiarity of the bar already acquired with the compiled laws of 1887, the same arrangement as to titles, chapters, articles and sections has been preserved. Where amended, it carries its section number consecutively, with note of amendment and date thereof. Amendments of subsequent laws have been noted in the same manner. New acts have been inserted under subjects to which they refer, with section, chapter and year of the law, and a note giving date at which it became operative. Laws on new subjects have been inserted under titles to which they are allied, with like reference and note, so that each section carries with it its history from the authenticated published laws of the state.

Notes have been made from the decisions of the courts, and follow the sections or subjects to which they refer.

Much credit is due the publishers for the style and grade of the work. They have spared no pains or expense to make it a first-class law publication. It is now far superior to that originally contemplated by the compiler when undertaking its publication.

Doubtless, errors have crept in during the progress of this work, although every possible precaution has been taken to prevent it. In view of the present condition of our published laws, it is believed that such errors will receive a friendly criticism looking toward their ultimate correction, and that this work will be appreciated for its usefulness and convenience to those whose interest or duty impels its examination.

EDWIN L. GRANTHAM.

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SUMMARY OF LAWS OF 1901.

At the 1901 session of the Legislature, acts were passed as follows:

ANIMALS:

requiring instructions in public schools of the State on humane treatment of.

ASSESSORS:

requiring them to meet with the board of county commissioners at April meeting in each year for conference with reference to duties.
requiring town and township assessors to be paid by county.

AIR GUNS:

use, manufacture and sale of, prohibited.

ATTORNEYS:

amendment of sections 734, et seq., requiring additional qualifications for admission, three years study in law office or diploma from college, and a first grade certificate from the State superintendent of public instruction, and providing for a written examination upon certain branches of the law.
providing for the postponement of causes when attorney or litigant is a member of the Legislature and in attendance.

BANKS:

amending section 4350 by striking out the word "ten" in said section and inserting in lieu thereof the word "five."

BOARD OF CHARITIES AND CORRECTIONS:

providing that appointees to fill vacancies hold their offices until the adjournment of the Legislature.

BONDS:

authorizing issue by incorporated towns.
authorizing issue by school district corporations.
authorizing issue by school boards in cities of the first class.
authorizing issue for the purpose of constructing water-works in cities.

BOUNTY:

amending Wolf Bounty Law, being section 3089a, et seq., limiting appropriation for such purpose to \$5,000 per annum.

BRANDS:

amending section 3065, increasing fee to \$2.50, and providing that absent members shall not receive percentage of fees.

BRIDGES:

amending section 1824, providing for division of expense of repairs between county and township and for the payment of the same.

CEMETERIES:

authorizing extension of limits and condemnation of lands therefor.

CHATTEL MORTGAGE SALES:

amending section 5567, requiring the time of the sale to be stated in the notice.

amending section 5568, providing that the mortgagor may demand sale of mortgaged chattels at a place in an adjoining county, also that stocks of merchandise may be sold in the building containing the same, whether at the place designated as a market place or not.

amending section 5569, providing that six days' notice, by publication, or ten days' posting notice of sale shall be sufficient.

CHILDREN:

providing homes for destitute children with societies organized for that purpose.

CITIES:

amending section 1307, adding city assessor to the list of elective officers.
amending section 1309, omitting city assessor from the list of appointive officers.

authorizing the loaning of the sinking fund in cities of the third class.
providing for the licensing of transient merchants in cities and towns and fixing fees at from \$75 to \$100 in cities and villages and at from \$50 to \$75 in towns.

amending section 1398, authorizing the payment of assessments in three annual installments.

authorizing the dividing of cities into wards and regulating the same.
authorizing the repair and construction of sidewalks in cities and towns, and providing for the levy of an assessment therefor.

amending section 1629, changing the limitation of 500 inhabitants to 350.

amending subdivision 2, section 1299, adding the express power to construct, operate and protect lighting, heating and power plants.

CONSTITUTIONAL AMENDMENTS:

submitting amendment to section 3, article 9, changing the required majority of two-thirds to majority of three-fifths when county seat is not located at a railroad station.

submitting amendment to section 2, article 8, reducing rate of interest from "six" to "five" per centum per annum.

submitting amendment to section 4, article 13, fixing the valuation at the assessment next preceding the election and adding "sewerage" to the list of purposes for which 10 per centum of indebtedness may be incurred, and providing that in cities of over 8,000 inhabitants an additional indebtedness of 8 per centum may be incurred for the next year for lighting and for street railway purposes.

COUNTIES:

authorizing counties to fund warrants issued since 1891 by issuing bonds therefor.

authorizing county commissioners to employ counsel to assist State's attorney.

prescribing procedure to determine liability of county for expense of insane patients in certain cases.

authorizing counties to counterclaim against the State for expenses incurred for unorganized counties of the State.

defining boundary lines between the counties of Pennington, Lawrence and Butte.

COUNTY AUDITOR:

amending section 982, providing that where fees are less than \$1,400, the deficiency shall be paid with warrants on the general fund; also amending section 983, authorizing board of county commissioners to fix salary of deputies.

COUNTY COMMISSIONERS:

amending section 936, changing limitation of "one political faith" to "in one municipality."
 providing for the election of commissioners by the whole county and fixing term at four years, and providing for their election at the bi-ennial elections.

COURTS:

authorizing the appointment of counsel for indigent defendants, fixing their compensation, authorizing the furnishing of transcripts and for attorney's fees for appeal in certain cases.
 providing that attorney or litigant is a member of the Legislature and in attendance, is grounds for continuance of causes.
 amending section 670, changing time of holding court in McPherson county to second Tuesday in June and third Tuesday in December; and in Faulk county to third Tuesday in June and fourth Tuesday in November.
 amending section 667, fixing time for holding court in Brookings county on second Tuesday in January and third Tuesday in June; in Duel county on third Tuesday in February; in Hamlin county on second Tuesday in March and October; Coddington county on first Tuesday in May and second Tuesday in November; in Clark county on third Tuesday in May and first Tuesday in December; Kingsbury county on the first Tuesday in June and third Tuesday in December.
 amending section 692, fixing time for holding court in Custer county on third Tuesday in March and second Tuesday in October.
 amending section 673, fixing the time for holding court in Butte county on the second Tuesday in October.
 providing for the holding of a term of court in Lyman county on the third Tuesday in June of each year.
 amending section 6090, requiring action upon promissory note to be tried in the county of the residence of one of the parties thereto before its delivery.
 amending section 6491, subdivision 3, to include assignors of claims and all parties interested therein in the list of exempted witnesses.
 amending section 6061, limiting extension of period of limitations to two years before action brought against administrator or executor.
 amending section 1048, changing the words "and no other jurisdiction whatever" to the words "and such other powers as are provided by law."
 amending section 1049, and fixing salaries.

DAIRY COMMISSIONER:

office created and duties prescribed, providing for the licensing of creameries and prohibiting adulteration of products.

DENTISTRY:

regulating the practice of dentistry, providing for licenses, examinations, etc., and prescribing penalties for violations.

DEPOSITIONS:

providing for personal notice to be given out of the State of the taking of depositions in lieu of the publication thereof, in case of nonresident defendants.

EDUCATION:

establishing a uniform system, repealing all former laws on the subject.

ELECTIONS:

- providing the manner of marking ballots.
- providing for the election of judges of Supreme and Circuit Courts in 1904, and at bi-ennial elections thereafter, and fixing terms of present judges of Supreme Court at six years and four months and their successors at six years, and six months, and the terms of the judges of the Circuit Court elected in 1901, at four years and six months and the terms of their successors at four years and six months.
- amending section 2056, providing that no name shall appear more than once upon the ballot.
- amending section 2047, limiting amount of expenditures to \$40 for general election and \$10 for municipal elections and \$8 for special and judicial elections.
- amending section 2120, adding following "1899" the words "and every year thereafter."
- providing that incorporated towns and villages may become election precincts.

ESTATES:

- amending section 7138, making subdivision 3, expenses of administration, and subdivision 4, debts due employes within sixty days of death, and subdivision 3 being made subdivision 5.
- amending section 7139, applying all proceeds of property to lien thereon in preference to other claims.
- authorizing nonresident executors and administrators to maintain actions in this State upon the same basis as other nonresident parties.
- authorizing executors and administrators to mortgage property of estate in certain cases.
- authorizing summary administration in small estates.

EVIDENCE:

- amending section 6538, making copy of record of copy of instrument admissible in evidence when duly certified.
- repealing section 6539.

EXECUTIONS:

- amending section 7033, subdivision 2, authorizing the enforcement of a judgment secured by attachment lien.

FEES:

- requiring the payment of all fees and perquisites received by State officers into the State treasury.

FENCES:

- amending section 3946, providing for fencing for pasturage purposes.

FLAXSEED OIL:

- adulteration of, prohibited.

FIREARMS:

- repeal of sections 8211 and 8212, prohibiting sale to Indians.

FUNDS:

- transferring fish fund to school fund.
- amending section 338, authorizing issuance of State warrants for money appropriated.

GAME:

- protecting large game, providing for game wardens' hunter's license prohibiting use of dogs and providing penalties.
- prohibiting the killing of antelope until the year 1911.

GOVERNOR:

fixing salary at \$3,000 per annum, to appoint code commission.

HISTORY:

establishing department of.

HOTEL-KEEPERS:

fraud upon, prohibited and punished. Evidence of guilt defined.

HUSBAND AND WIFE:

amending section 3508, adding to conditions authorizing transfer by the other, confinement in the State insane asylum.

INSURANCE:

amending section 4047, providing that one-third of the directors shall be elected annually and shall hold their office for a term of three years.

amending section 4114, adding to the classes of property authorized to be insured churches and schoolhouses, also adding to contents farm products in stack, crib or granary.

amending section 4021, reducing capital stock required to \$100,000, 20 per cent in cash and remainder in bonds or real estate loans, in this State.

amending section 4022, to make act apply to mutual fire, hail or cyclone insurance company, and requiring 200 risks representing \$200,000 before certificate of authority can issue; and prescribing the duties and powers of the Commissioner of Insurance with reference thereto.

INTOXICATING LIQUORS:

amending section 3010, fixing license of traveling salesman selling in lots less than five gallons at \$200; for wholesaling brewed and malt liquors \$150; wholesaling generally, \$500, and providing that no wholesale establishment shall be located in a town granting no retail license.

amending section 3011, defining retail dealers so as to include sales by the bottle, and omitting exemption of certain wines from the operation of the act.

amending section 3015, excepting surety bonds from furnishing affidavit required by the section.

amending section 3020, so as to require notice to the dealer of the fact that a person is in the habit of becoming intoxicated before a violation of the law is had.

amending section 3036, striking out the word "malt" where it occurs in the third line of said section, and prohibiting sale to be drunk on the premises, and striking out the word "knowingly" where it occurs on the tenth line of said section.

amending section 3016, provided that the license money received by the county treasurer shall be placed to the credit of the county general fund, prohibiting the adulteration and the sale of adulterated liquors, and prescribing penalty for violation.

prohibiting sale in cities, towns and villages granting no license.

JUDGMENTS:

declaring judgments to be complete and effective when filed with the clerk of the Circuit Court; likewise the orders of the court.

amending section 6321, striking out the words "a copy of" where it occurs in the third line of said section.

JURORS:

providing for the manner of selecting lists.

JUSTICES OF THE PEACE:

- amending section 872*a*, exempting counties organized into civil townships; also amending section 872*b*, in like manner.
- amending section 1643, providing that where town is situated in more than one county, duplicate bonds shall be filed with the clerk of the Circuit Court in each county.
- amending section 1575, providing for concurrent jurisdiction with other justices of the county in civil and criminal actions where the defendant is served or offense committed, and providing for procedure on change of venue.

KIDNAPPING:

- prohibiting and prescribing penalty therefor.

LIBRARIES:

- providing for a library board, and the supplying of schools with libraries and paying the expense thereof out of the apportionment fund.
- authorizing the establishment of libraries in cities of the first and second class, and providing for a tax levy for support of same.

LIENS:

- amending section 6738, requiring the filing of the lien within ten days as notice to innocent purchasers.
- amending section 6739, changing word "ten" where it occurs in third line of said section to the word "twenty."

MEDICINE:

- amending section 377, changing the word "three," where it occurs in the fifth line of said section, to "four," and making the license fee \$10 instead of \$5.

MILITARY:

- providing for the care, preservation and leasing of the permanent camp and parade ground of the State militia.
- amending sections 2574, 2575, 2578, 2579, 2580, 2589, 2591, 2622, 2623, 2624, 2635, 2636, 2637, 2638, 2639 and 2642, changing the name from National Guard to State Guard, and minor changes and revisions, and repealing sections 2595 and 2596.

OFFICERS:

- authorizing the removal of constitutional officers not liable to impeachment by the Governor for cause, and the removal of all other officers by the Governor without cause.

PERJURY:

- amending section 7618, subdivision 1, fixing penalty at not less than one nor more than twenty years imprisonment.

PUBLIC PRINTING:

- a general law defining public printing and binding, and the manner of publishing and distributing the laws of the State.

REAL ESTATE:

- providing that State shall formally accept grants.
- authorizing sale of lands held by counties under tax deed or otherwise, and providing the procedure therefor.

REGISTER OF DEEDS:

- amending section 982, providing that where fees are less than \$1,400, the deficiency shall be paid in warrants on general fund.

ROAD OVERSEER:

requiring overseer to fill unused wells and cisterns when located in exposed places.

SCHOOLS:

amending section 531a, changing name of Aberdeen school to Normal and Industrial school; also unimportant amendments of other sections of chapter 76 of Laws of 1899.

SCHOOL AND PUBLIC LANDS:

prohibiting trespass upon, and prescribing punishment therefor, and authorizing action for civil damages on account thereof.

SCHOOL FUND:

amending section 348, authorizing the loaning of school funds on State, county and municipal bonds.

SOLDIERS' HOME:

amending section 425, providing for the appointment of a full board in 1901, and fixing terms at two, four and six years.

SOCIETIES FOR CARE OF DESTITUTE CHILDREN:

providing for their supervision by the Board of Charities and Corrections.

SPLITZ:

a bushel defined to be forty-five pounds, avoirdupois.

STATE:

claims against, for judicial and other expenses in unorganized counties, adjusted and paid.

STATE BOARD OF AGRICULTURE:

amending section 277, providing for the appointment of one board of five members, fixing terms of office and appropriating funds for expenses.

STATE INSTITUTIONS:

providing for the payment of all money into State treasury.

STATE UNIVERSITY:

law department established.

STEAM THRESHERS:

amending section 3338, adding condition of bond to pay damage caused to telegraph and telephone lines while traveling along highway.

STOLEN PROPERTY:

amending section 8056, providing that when the value of the property is less than \$20, the penalty is limited to \$100 fine and thirty days in jail, and awarding justices of the peace jurisdiction to try and determine.

SUMMONS:

amending section 6054, providing for the postponement of trial for service on defendants not served, and for the publication of the summons in certain cases.

SURVEYS:

providing for the survey of sections, and the establishment of section and quarter-section lines in unorganized townships.

SWINE:

prohibiting the transportation of when diseased, and prescribing penalty therefor.

TAXES:

- requiring county auditor to apply warrants on delinquent taxes, also preventing the assignment of claims to avoid offset.
- amending section 2277, requiring deposit in court before bringing action to redeem from tax sale, except where sale is for illegally assessed tax.
- amending section 2176, changing the word "Monday," where it occurs in the fifth line of said section, to "Tuesday," and changing the word "five," where it occurs on the last line, but one, of subdivision 6 of said section, to "fifteen," and changing the word "Monday," where it occurs in the last line of said subdivision, to "Tuesday."
- amending section 2142g, correcting the form of the oath prescribed.
- amending section 2177, prescribing a more fully detailed list of property in abstract.
- amending section 2143, providing for assessment of live stock where "home ranch" is situated, also for listing stocks of merchandise where situated.
- amending section 2267, providing that while county holds title to lands under tax sale, the same shall not be readvertised and sold.
- amending section 1724, providing for notice by nonresident that he intends to work out road tax, and naming the resident employed for that purpose, or that the same be paid in cash.
- amending section 2294, providing for the consolidation of all taxes to be levied, and for the specification of the percentage belonging to the various funds.
- providing for the entry of judgment against real estate for delinquent taxes, and sale thereunder.
- providing for the collection of delinquent personal property taxes by the sheriff of the county.
- providing for the collection of tax upon live stock upon the ranges of this State, which are the property of nonresidents.
- defining powers and duties of the State Board of Equalization.
- authorizing State Board of Equalization to levy a one-mill tax for deficiency.

TELEGRAPH AND TELEPHONE LINES.

- amending section 8178, providing for the moving of buildings across lines, and for the protection of wires and poles, and for civil action for damages, etc.

TOWNS:

- amending section 1524, providing for the adjustment of all claims and demands by county commissioners.
- amending section 1108, authorizing the holding of lands for the use of the municipality, and the holding of property for the protection of the property of its inhabitants, and to pass ordinances for the protection of life and property, and to enforce the same, and to order laying of sidewalks in villages and towns, and to abate nuisances.
- amending section 1629, changing limitation of 500 inhabitants to 350.
- authorizing the payment of assessors by the county.
- authorizing the construction and repair of sidewalks, and providing for the levy of special assessments upon the property therefor.
- authorizing the reassessment of local improvements in case the same shall have been illegally or erroneously levied.
- authorizing the issue of bonds to refund outstanding bonded indebtedness.

TOWNSHIPS:

- authorizing the payment of assessors by the county.
- providing for the construction of drains and ditches.
- repealing section 2954.
- amending section 1238, changing word "town," where it occurs in first line of said section, to "township," and providing for the establishment of pounds by the county commissioners where no civil townships exist.
- amending section 1239, authorizing county commissioners to discontinue pounds where no civil townships exist.
- amending section 1240, providing that poundmasters, where no civil townships exist, shall turn moneys into county treasury, where the same shall be placed to the credit of the school fund.

UNITED STATES FLAG:

- amending section 8200, adding the words "maliciously," and providing that tralling in the dust shall constitute an offense.

VETERINARY SURGEON:

- amending section 3136, fixing salary at \$1,200 per annum, and traveling expenses.

WASTE GATES:

- requiring owners of dams to construct waste gates for the speedy escape of surplus or flood waters.

NOTES TO CONSTITUTION.

[By Marginal or Running Number.]

17. Entry of title of amendment sufficient. Amendment to the Constitution may become a law without joint resolution. *State v. Herreid*, 10 S. Dak. 16; 71 N. W. 319.

23. Joint resolutions presumed to have a title and reference thereto is sufficient. *Lovett v. Ferguson*, 10 S. Dak. 45; 71 N. W. 765.

25. An act authorizing civil townships to sink artesian wells for public purposes and to issue bonds therefor, sufficiently expresses the subject of the bill providing for sinking of wells at expense of taxpayers, etc. *Miles v. Benton Township*, 11 S. Dak. 450; 78 N. W. 1004.

An act changing and defining the boundaries of Stanley county, sufficiently expresses the subject in the title of a bill providing for the submission of the question of such change to the voters of the county. *Stuart et al. v. Kirley et al.*, 12 S. Dak. 245; 81 N. W. 147.

26. On debt contracted subsequent to the passage of Laws 1890 and prior to the expiration of ninety days from the adjournment of the session, was entitled to claim exemptions previously allowed. *Long v. Collins, Sheriff*, 12 S. Dak. 621; 82 N. W. 95.

27. The act providing for change of boundaries of Stanley county and submitting question to a vote, not unconstitutional. *Stuart et al. v. Kirley et al.*, 12 S. Dak. 245; 81 N. W. 147.

45. Secretary of State may receive compensation for services upon the brand commission. *State v. Roddle*, 12 S. Dak. 433; 81 N. W. 980.

47. Does not prevent limiting appeals in certain classes of cases. *McClain v. Williams*, 10 S. Dak. 332; 73 N. W. 72.

63. This section permissive only and does not prohibit legislature from limiting appeals to a certain class of cases. *McClain v. Williams*, 10 S. Dak. 332; 73 N. W. 72.

79. Law limiting appeals to cases where recovery is \$75 or less, is a violation of this section of the Constitution. *McClain v. Williams*, 11 S. Dak. 666; 75 N. W. 391.

Section 10, chapter 81, Laws of 1890, constitutional. *Minnehaha County v. Thorne*, 6 S. Dak. 449; 61 N. W. 688.

85. Statute to create a lien in favor of landlord or innkeeper on goods of third persons, unconstitutional. *McClain v. Williams*, 11 S. Dak. 227; 76 N. W. 930.

Section 4340 prohibiting private banking, unconstitutional, except so far as it relates to the issuing bills or paper credit designed to circulate as money. *State v. Scougal*, 3 S. Dak. 55; 51 N. W. 858.

89. Law abolishing grand jury, held constitutional. *State v. Ayres*, 8 S. Dak. 517; 67 N. W. 611.

90. A person cannot be tried after conviction of the same offense alleged to have been committed at a different time. *State v. Adams*, 11 S. Dak. 431; 78 N. W. 353.

103. This section does not prevent the limiting of appeals to certain class of cases. *McClain v. Williams*, 10 S. Dak. 332; 73 N. W. 72.

106. Punishment imposed for the first offense of keeping and maintaining a common nuisance not cruel punishment. *State v. Becker*, 3 S. Dak. 29; 51 N. W. 1018.

137. Elections may be held in organized counties only. Electors of unorganized counties not entitled to vote on such questions. *Stuart et al. v. Kirley et al.*, 12 S. Dak. 245; 81 N. W. 95.

142. Section 10, chapter 81, Laws of 1890, constitutional. *Minnehaha County v. Thorne*, 6 S. Dak. 449; 61 N. W. 688.

145. Law authorizing the sinking of artesian wells by townships at expense of taxpayers not in violation of Constitution. *Miles v. Benton Township*, 11 S. Dak. 450; 78 N. W. 1004.

148. Act providing for deduction of indebtedness from credits and personal property in making assessments and not providing for such deduction in case of real estate is unconstitutional and void. *In re Assessment and Collection of Taxes*, 4 S. Dak. 6.

Liquor license is a police regulation and not a tax, therefore, not invalid because it gives the State a part of the license. *State v. Buechler*, 10 S. Dak. 156; 72 N. W. 114.

155. Appropriation for fuel and lights for agricultural college, by Laws of 1891, authorizes expenditure of \$2,000, on March 8, 1891, to March 8, 1892, and not exceeding \$2,620 to June 30, 1893. *Van Dusen v. State*, 11 S. Dak. 318; 75 N. W. 274.

163. Appropriation for benefit of fire companies not a donation. Held constitutional. *Cutting v. Taylor*, 3 S. Dak. 11; 51 N. W. 949.

164. Act directing the issue and sale of State bonds to make good losses of school fund caused by defalcation of State Treasurer, not unconstitutional. *In re State Bonds*, 7 S. Dak. 42.

167. Failure to make provision for payment of bonds is not available as a defense to the payment of the bond. *Wilson v. Board of Education of Huron*, 12 S. Dak. 535; 81 N. W. 952.

199. Does not repeal or modify the statute making such companies common carriers. *Kirby v. W. U. Tel. Co.*, 4 S. Dak. 105; 55 N. W. 759.

207. This section has no application to quasi corporation organized under the laws of the State for political and governmental purposes. *Town of Dell Rapids v. Irving*, 7 S. Dak. 310; 64 N. W. 149.

218. Secretary of State may receive compensation for services upon the brand commission. *State v. Roddle*, 12 S. Dak. 433; 81 N. W. 980.

Constitution of State of South Dakota.

[Adopted October 1, 1889.]

PREAMBLE.

1. We, the people of South Dakota, grateful to Almighty God for our civil and religious liberties, in order to form a more perfect and independent government, establish justice, insure tranquillity, provide for the common defense, promote the general welfare and preserve to ourselves and to our posterity the blessings of liberty, do ordain and establish this constitution for the State of South Dakota.

ARTICLE I.

NAME AND BOUNDARY.

2. **Name.** § 1. The name of the State shall be South Dakota.

3. **Boundaries.** § 2. The boundaries of the State of South Dakota shall be as follows: Beginning at the point of intersection of the western boundary line of the State of Minnesota with the northern boundary line of the State of Iowa, and running thence northerly along the western boundary line of the State of Minnesota to its intersection with the 7th standard parallel; thence west on the line of the 7th standard parallel produced due west to its intersection with the 27th meridian of longitude west from Washington; thence south on the 27th meridian of longitude west from Washington to its intersection with the northern boundary line of the State of Nebraska; thence easterly along the northern boundary line of the State of Nebraska to its intersection with the western boundary line of the State of Iowa; thence northerly along the western boundary line of the State of Iowa to its intersection with the northern boundary line of the State of Iowa; thence east along the northern boundary line of the State of Iowa to the place of beginning.

ARTICLE II.

DIVISION OF THE POWERS OF GOVERNMENT.

4. Three departments. The powers of the government of the State are divided into three distinct departments — the legislative, executive and judicial; and the powers and duties of each are prescribed by this constitution.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

5. Legislative power vested. § 1. The legislative power shall be vested in a legislature, which shall consist of a senate and house of representatives, except that the people expressly reserve to themselves the right to propose measures, which measures the legislature shall enact and submit to a vote of the electors of the State, and also the right to require that any laws which the legislature may have enacted shall be submitted to a vote of the electors of the State before going into effect, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the State government and its existing public institutions. Provided, That not more than five per centum of the qualified electors of the State shall be required to invoke either the initiative of (or) the referendum. This section shall not be construed so as to deprive the legislature, or any member thereof, of the right to propose any measure. The veto power of the executive shall not be exercised as to measures referred to a vote of the people. This section shall apply to municipalities. The enacting clause of all laws approved by vote of the electors of the State shall be "Be it enacted by the People of South Dakota." The legislature shall make suitable provisions for carrying into effect the provisions of this section [Submitted by chapter 39, Laws 1897, and adopted by vote of the people at election held November 8, 1898.]

6. Representatives, number of — senate, number of — biennial sessions. § 2. The number of members of the house of representatives shall not be less than seventy-five nor more than one hundred and thirty-five. The number of members of the senate shall not be less than twenty-five nor more than forty-five. The sessions of the legislature shall be biennial except as otherwise provided in this constitution.

7. Qualifications of senator — of representative — eligibility, etc. § 3. No person shall be eligible to the office of senator who is not a qualified elector in the district from which he may be chosen, and a

citizen of the United States, and who shall not have attained the age of twenty-five years, and who shall not have been a resident of the State or Territory for two years next preceding his election.

No person shall be eligible to the office of representative who is not a qualified elector in the district from which he may be chosen, and a citizen of the United States, and who shall not have been a resident of the State or Territory for two years next preceding his election, and who shall not have attained the age of twenty-five years.

No judge or clerk of any court, secretary of state, attorney-general, state's attorney, recorder, sheriff or collector of public moneys, member of either house of congress, or person holding any lucrative office under the United States or this State, or any foreign government, shall be a member of the legislature; *Provided*, that appointments in the militia, the offices of notary public and justice of the peace shall not be considered lucrative; nor shall any person holding any office of honor or profit under any foreign government or under the government of the United States, except postmasters whose annual compensation does not exceed the sum of three hundred dollars, hold any office in either branch of the legislature or become a member thereof.

8. Persons not eligible. § 4. No person who has been, or hereafter shall be, convicted of bribery, perjury or other infamous crime, nor any person who has been, or may be collector or holder of public moneys who shall not have accounted for and paid over, according to law, all such moneys due from him, shall be eligible to the legislature or to any office in either branch thereof.

9. Enumeration — when apportionment made. § 5. The legislature shall provide by law for the enumeration of the inhabitants of the State in the year one thousand eight hundred and ninety-five and every ten years thereafter, and at its first regular session after each enumeration, and also after each enumeration made by authority of the United States, but at no other time, the legislature shall apportion the senators and representatives according to the number of inhabitants, excluding Indians not taxed and soldiers and officers of the United States army and navy; *Provided*, that the legislature may make an apportionment at its first session after the admission of South Dakota as a State.

This is mandatory, but no authority can compel the legislature to act. In re State Census. 6 S. D. 540; 62 N. W. 129.

In case of failure to make apportionment, old apportionment will stand. Id.

10. Term of office — mileage — length of session. § 6. The terms of the office of the members of the legislature shall be two years; they shall receive for their services the sum of five dollars for each day's attend-

ance during the session of the legislature, and five cents for every mile of necessary travel in going to and returning from the place of meeting of the legislature on the most usual route [Amended by election 1892.]

Each regular session of the legislature shall not exceed sixty days, except in cases of impeachment, and members of the legislature shall receive no other pay or perquisites except per diem and mileage.

11. Legislature convened, when. § 7. The legislature shall meet at the seat of government on the first Tuesday after the first Monday of January at 12 o'clock M., in the year next ensuing the election of members thereof, and at no other time except as provided by this constitution.

12. Oath, how administered — forfeiture and disqualification. § 8. Members of the legislature and officers thereof, before they enter upon their official duties, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the State of South Dakota, and will faithfully discharge the duties of (senator, representative or officer) according to the best of my abilities, and that I have not knowingly or intentionally paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill said office, and have not accepted, nor will I accept or receive directly or indirectly, any money, pass, or any other valuable thing, from any corporation, company or person for any vote or influence I may give or withhold on any bill or resolution, or appropriation, or for any other official act.

This oath shall be administered by a judge of the supreme or circuit court, or the presiding officer of either house, in the hall of the house to which the member or officer is elected, and the secretary of state shall record and file the oath subscribed by each member and officer.

Any member or officer of the legislature who shall refuse to take the oath herein prescribed shall forfeit his office.

Any member or officer of the legislature who shall be convicted of having sworn falsely to, or violated his said oath, shall forfeit his office and be disqualified thereafter from holding the office of senator or member of the house of representatives or any office within the gift of the legislature.

13. Each house judge of election — quorum — rules. § 9. Each house shall be the judge of the election returns and qualifications of its own members.

A majority of the members of each house shall constitute a quorum, but a smaller number may adjourn from day to day, and may compel the

attendance of absent members in such a manner and under such penalty as each house may provide.

Each house shall determine the rules of its proceedings, shall choose its own officers and employes and fix the pay thereof, except as otherwise provided in this constitution.

14. Writs of election—vacancies. § 10. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature.

15. Members privileged from arrest. § 11. Senators and representatives shall, in all cases except treason, felony or breach of peace, be privileged from arrest during the session of the legislature, and in going to and returning from the same; and for words used in any speech or debate in either house, they shall not be questioned in any other place.

16. Members not to hold other office, etc. § 12. No member of the legislature shall, during the term for which he was elected, be appointed or elected to any civil office in the State which shall have been created or the emoluments of which shall have been increased during the term for which he was elected, nor shall any member receive any civil appointment from the governor, the governor and senate or from the legislature during the term for which he shall have been elected, and all such appointments and all votes given for any such members for any such office or appointment shall be void; nor shall any member of the legislature during the term for which he shall have been elected, or within one year thereafter, be interested, directly or indirectly, in any contract with the State or any county thereof, authorized by any law passed during the term for which he shall have been elected.

An attorney, member of the legislature, cannot recover for legal services rendered officers of the State during the term for which he has been elected, when employed under an act passed by the legislature of which he is a member. *Palmer v. State*, 75 N. W. 818.

17. Journal of proceedings. § 13. Each house shall keep a journal of its proceedings and publish the same from time to time, except such parts as require secrecy, and the yeas and nays of members on any question shall be taken at the desire of one-sixth of those present and entered upon the journal.

18. Viva voce vote. § 14. In all elections, to be made by the legislature the members thereof shall vote *viva voce* and their votes shall be entered in the journal.

19. When open sessions. § 15. The sessions of each house and of the committee of the whole shall be open, unless when the business is such as ought to be kept secret.

20. Adjournment — joint consent. § 16. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

21. Bills read three times. § 17. Every bill shall be read three several times, but the first and second readings may be on the same day, and the second reading may be by the title of the bill, unless the reading at length be demanded. The first and third readings shall be at length.

22. Enacting clause — form of. § 18. The enacting clause of a law shall be: "Be it enacted by the Legislature of the State of South Dakota," and no law shall be passed unless by assent of a majority of all the members elected to each house of the legislature. And the question upon the final passage shall be taken upon its last reading, and the yeas and nays shall be entered upon the journal.

23. Presiding officer sign bills. § 19. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislature, after their titles have been publicly read immediately before signing, and the fact of signing shall be entered upon the journal.

24. Bills, how originate. § 20. Any bill may originate in either house of the legislature, and a bill passed by one house may be amended in the other.

25. But one subject embraced. § 21. No law shall embrace more than one subject, which shall be expressed in its title.

26. When acts take effect. § 22. No act shall take effect until ninety days after the adjournment of the session at which it passed, unless in case of emergency (to be expressed in the preamble or body of the act) the legislature shall, by a vote of two-thirds of all the members elected of each house, otherwise direct.

27. Private and special laws prohibited — special cases. § 23. The legislature is prohibited from enacting any private or special laws in the following cases:

1. Granting divorces.
2. Changing the names of persons or places, or constituting one person the heir at law of another.
3. Locating or changing county seats.
4. Regulating county and township affairs.
5. Incorporating cities, towns and villages, or changing or amending the charter of any town, city or village, or laying out, opening, vacating or altering town plats, streets, wards, alleys and public ground.
6. Providing for sale or mortgage of real estate belonging to minors or others under disability.

7. Authorizing persons to keep ferries across streams wholly within the State.

8. Remitting fines, penalties or forfeitures.

9. Granting to an individual, association or corporation any special or exclusive privilege, immunity or franchise whatever.

10. Providing for the management of common schools.

11. Creating, increasing or decreasing fees, percentages or allowances of public officers during the terms for which said officers are elected or appointed.

But the legislature may repeal any existing special law relating to the foregoing subdivisions.

In all other cases where a general law can be applicable, no special law shall be enacted.

28. Indebtedness — no power to release, etc. § 24. The legislature shall have no power to release or extinguish, in whole or in part the indebtedness, liability or obligation of any corporation or individual to this State or to any municipal corporation therein.

29. Gaming, etc., not to be authorized. § 25. The legislature shall not authorize any game of chance, lottery or gift enterprise, under any pretense or for any purpose whatever.

30. Not to delegate special commission. § 26. The legislature shall not delegate to any special commission, private corporation, or association, any power to make, supervise or interfere with any municipal improvement, money, property, effects, whether held in trust or otherwise, or levy taxes, or to select a capitol site, or to perform any municipal functions whatever.

31. Suits against State — manner of bringing. § 27. The legislature shall direct by law in what manner and in what courts suits may be brought against the State.

32. Bribery — solicitation of members — punished. § 28. Any person who shall give, demand, offer, directly or indirectly, any money, testimonial, privilege or personal advantage, thing of value to any executive or judicial officer or member of the legislature, to influence him in the performance of any of his official or public duties, shall be guilty of bribery and shall be punished in such manner as shall be provided by law.

The offense or corrupt solicitation of members of the legislature, or of public officers of the State, or any municipal division thereof, and any effort toward solicitation of said members of the legislature or officers to influence their official action shall be defined by law, and shall be punishable by fine and imprisonment.

Any person may be compelled to testify in investigation or judicial proceedings against any person charged with having committed any offense of bribery or corrupt solicitation, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, but said testimony shall not afterwards be used against him in any judicial proceeding except for bribery in giving such testimony, and any person convicted of either of the offenses aforesaid shall be disqualified from holding any office or position or office of trust or profit in this State.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

33. Executive power. § 1. The executive power shall be vested in a governor who shall hold his office two years. A lieutenant governor shall be elected at the same time and for the same term.

34. Eligibility of officers. § 2. No person shall be eligible to the office of governor or lieutenant governor except a citizen of the United States and a qualified elector of the State, who shall have attained the age of 30 years, and who shall have resided two years next preceding the election within the State or Territory; nor shall he be eligible to any other office during the term for which he shall have been elected.

35. How elected. § 3. The governor and lieutenant governor shall be elected by the qualified electors of the State at the time and places of choosing members of the legislature. The persons respectively having the highest number of votes for governor and lieutenant governor shall be elected; but if two or more shall have an equal and highest number of votes for governor or lieutenant-governor, the two houses of the legislature at its next regular session shall forthwith, by joint ballot, choose one of such persons for said office. The returns of the election for governor and lieutenant governor shall be made in such manner as shall be prescribed by law.

36. Governor to command army and naval forces. § 4. The governor shall be commander-in-chief of the military and naval forces of the State, except when they shall be called into the service of the United States, and may call out the same to execute laws, suppress insurrection and repel invasion. He shall have power to convene the legislature on extraordinary occasions. He shall, at the commencement of each session, communicate to the legislature by message, information of the condition

of the State, and shall recommend such measures as he shall deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws be faithfully executed.

37. Powers of governor — fines — reprieves — pardons, etc. § 5. The governor shall have the power to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment; *Provided*, that in all cases where the sentence of the court is capital punishment, imprisonment for life, or for a longer term than two years, or a fine exceeding two hundred dollars, no pardon shall be granted, sentence commuted or fine remitted, except upon the recommendation in writing of a board of pardons, consisting of the presiding judge, secretary of state and attorney general, after a full hearing in open session, and such recommendation, with the reasons therefor, shall be filed in the office of the secretary of state, but the legislature may by law in all cases regulate the manner in which the remission of fines, pardons, commutations and reprieves, may be applied for. Upon conviction for treason he shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next regular session, when the legislature shall either pardon or commute the sentence, direct the execution of the sentence or grant a further reprieve. He shall communicate to the legislature at each regular session each case of remission of fine, reprieve, commutation or pardon, granted by him in the cases in which he is authorized to act without the recommendation of the said board of pardons, stating the name of the convict, the crime of which he is convicted, the sentence and its date, and the date of the remission, commutation, pardon or reprieve, with his reasons for granting the same.

38. Lieutenant governor to act, when. § 6. In case of death, impeachment, resignation, failure to qualify, absence from the State, removal from office or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

39. Same — president of senate. § 7. The lieutenant governor shall be president of the senate, but shall have only a casting vote therein. If during a vacancy in the office of governor the lieutenant governor shall be impeached, displaced, resign or die, or from mental or physical disease or otherwise become incapable of performing the duties of his office, the secretary of state shall act as governor until the vacancy shall be filled or the disability removed.

40. Filling vacancies — appointment. § 8. When any office shall, from any cause, become vacant and no mode is provided by the constitution or law for filling such vacancy, the governor shall have the power to fill such vacancy by appointment.

41. Bills to have governor's sanction, etc. § 9. Every bill which shall have passed the legislature, shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it; but if not, he shall return it with his objection to the house in which it originated, which shall enter the objection at large upon the journal and proceed to reconsider it. If after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent together with the objection, to the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of the members present, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal of each house respectively. If any bill shall [not] be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the legislature shall by its adjournment prevent its return, in which case it shall be filed, with his objection, in the office of the secretary of state within ten days after such adjournment, or become a law.

42. Governor can disapprove bill or items. § 10. The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items, and the part or parts of the bill approved shall be law, and the item or items disapproved shall be void unless enacted in the following manner: If the legislature be in session he shall transmit to the house in which the bill originated, a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as it prescribed for the passage of bills over the executive veto.

43. Receiving bribe. § 11. Any governor of this State who asks, receives, or agrees to receive any bribe upon any understanding that his official opinion, judgment or action shall be influenced thereby, or who gives or offers, or promises his official influence in consideration that any member of the legislature shall give his official vote or influence on any particular side of any question or matter upon which he may be required to act in his official capacity, or who menaces any member by the threatened use of his veto power or who offers or promises any member that he, the said governor, will appoint any particular person or persons to any office created or thereafter to be created in consideration that any

member shall give his official vote or influence on any matter pending or thereafter to be introduced into either house of said legislature or who threatens any member that he, the said governor, will remove any person or persons from any office or position with intent to in any manner influence the official action of said member, shall be punished in the manner now, or that may hereafter be, provided by law, and upon conviction thereof shall forfeit all right to hold or exercise any office of trust or honor in this State.

44. Other officers, how chosen. § 12. There shall be chosen by the qualified electors of the State, at the time and places of choosing members of the legislature, a secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of school and public lands, and an attorney general, who shall severally hold their offices for the term of two years, but no person shall be eligible to the office of treasurer for more than two terms consecutively. They shall respectively keep their offices at the seat of government.

45. Powers and duties. § 13. The powers and duties of the secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of school and public lands and attorney general shall be as prescribed by law.

ARTICLE V.

JUDICIAL DEPARTMENT.

46. Powers, how vested. § 1. The judicial powers of the State, except as in this constitution otherwise provided, shall be vested in a supreme court, circuit courts, county courts, and justices of the peace, and such other courts as may be created by law for cities and incorporated towns.

47. Supreme court — jurisdiction. § 2. The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be coextensive with the State, and shall have a general superintending control over all inferior courts under such regulations and limitations as may be prescribed by law.

This section materially enlarges ordinary appellate jurisdiction conferred upon reviewing courts. *City of Huron v. Campbell Circuit Judge*, 3 S. D. 309; 53 N. W. 182.

48. Powers of same — and judges thereof. § 3. The supreme court and the judges thereof shall have power to issue writs of *habeas corpus*. The supreme court shall also have power to issue writs of *mandamus*, *quo warranto*, *certiorari*, injunction, and other original and remedial writs, with authority to hear and determine the same in such cases and under

such regulations as may be prescribed by law; *Provided, however*, that no jury trials shall be allowed in said supreme court, but in proper cases questions of fact may be sent by said court to a circuit court for trial before a jury.

“Writ of quo warranto” gives court jurisdiction of cases in which the information in nature of quo warranto has become a substitute for that ancient writ. *State ex rel. McGee v. Gardner*, 3 S. D. 553; 54 N. W. 606.

49. Terms. § 4. At least two terms of the supreme court shall be held each year at the seat of government.

50. Three judges, how chosen. § 5. The supreme court shall consist of three judges, to be chosen from districts by qualified electors of the State at large, as hereinafter provided.

51. Number, when increased. § 6. The number of said judges and districts may after five years from the admission of this State under this constitution be increased by law to not exceeding five.

52. Quorum. § 7. A majority of the judges of the supreme court shall be necessary to form a quorum or to pronounce a decision, but one or more of said judges may adjourn the court from day to day, or to a day certain.

53. Term of office. § 8. The term of the judges of the supreme court who shall be elected at the first election under this constitution shall be four years. At all subsequent elections the term of said judges shall be six years.

54. Presiding judge. § 9. The judges of the supreme court shall by rule select from their number a presiding judge, who shall act as such for the term prescribed by such rule.

55. Eligibility. § 10. No person shall be eligible to the office of judge of the supreme court unless he be learned in the law, be at least thirty years of age, a citizen of the United States, nor unless he shall have resided in this State or Territory at least two years next preceding his election and at the time of his election be a resident of the district from which he is elected; but for the purpose of re-election, no such judge shall be deemed to have lost his residence in the district by reason of his removal to the seat of government in the discharge of his official duties.

56. Judicial districts. § 11. Until otherwise provided by law, the districts from which the said judges of the supreme court shall be elected shall be constituted as follows:

First district — All that portion of the State lying west of the Missouri river.

Second district — All that portion of the State lying east of the Missouri river and south of the second standard parallel.

Third district — All that portion of the State lying east of the Missouri river and north of the second standard parallel.

57. Other officers — clerk — reporter — copyright. § 12. There shall be a clerk and also a reporter of the supreme court, who shall be appointed by the judges thereof and who shall hold office during the pleasure of said judges, and whose duties and emoluments shall be prescribed by law, and by the rules of the supreme court not inconsistent with law. The legislature shall make provisions for the publication and distribution of the decisions of the supreme court, and for the sale of the published volumes thereof. No private person or corporation shall be allowed to secure any copyright to such decisions, but if any copyrights are secured they shall inure wholly to the benefit of the State.

58. Governor require opinions. § 13. The governor shall have authority to require the opinions of the judges of the supreme court upon important questions of law involved in the exercise of his executive powers and upon solemn occasions.

CIRCUIT COURTS.

59. Circuit courts — jurisdiction. § 14. The circuit courts shall have original jurisdiction of all actions and causes, both at law and in equity, and such appellate jurisdiction as may be conferred by law and consistent with this constitution; such jurisdiction as to value and amount and grade of offense may be limited by law. They and the judges thereof shall also have jurisdiction and power to issue writs of *habeas corpus*, *mandamus*, *quo warranto*, *certiorari*, injunction, and other original and remedial writs, with authority to hear and determine the same.

60. State divided into judicial circuits. § 15. The State shall be divided into judicial circuits, in each of which there shall be elected by the electors thereof one judge of the circuit court therein, whose term of office shall be four years.

61. Circuits. § 16. Until otherwise ordered by law, said circuits shall be eight in number and constituted as follows, viz.

First circuit — The counties of Union, Clay, Yankton, Turner, Bon Homme, Hutchinson, Charles Mix, Douglas, Todd, Gregory, Tripp and Meyer.

Second circuit — The counties of Lincoln, Minnehaha, McCook, Moody and Lake.

Third circuit — The counties of Brookings, Kingsbury, Deuel, Hamlin, Codington, Clark, Grant, Roberts, Day, and the Wahpeton and

Sisseton reservation, except such portion of said reservation as lies in Marshall county.

Fourth circuit — The counties of Sanborn, Davison, Aurora, Brule, Buffalo, Jerauld, Hanson, Miner, Lyman, Presho and Pratt.

Fifth circuit — The counties of Beadle, Spink, Brown and Marshall.

Sixth circuit — The counties of Hand, Hyde, Hughes, Sully, Stanley, Potter, Faulk, Edmunds, Walworth, Campbell, McPherson, and all that portion of said State lying east of the Missouri river and not included in any other judicial circuit.

Seventh circuit — The counties of Pennington, Custer, Fall River, Shannon, Washington, Ziebach, Sterling, Nowlin, Jackson, Washabaugh and Lugenbeel.

Eighth circuit — The counties of Lawrence, Meade, Scobey, Butte, Delano, Pyatt, Dewey, Boreman, Schnasse, Rinehart, Martin, Choteau, Ewing, Harding, and all that portion of said State west of the Missouri river and north of the Big Cheyenne river and the north fork of the Cheyenne river not included in any other judicial circuit.

62. Increase of circuits and judges, how made. § 17. The legislature may, whenever two-thirds of the members of each house shall concur therein, increase the number of judicial circuits and the judges thereof, and divide the State into judicial circuits accordingly, taking care that they be formed of compact territory and be bounded by county lines; but such increase of number or change in the boundaries of districts shall not work the removal of any judge from his office during the term for which he shall have been elected or appointed.

63. Writs of error — appeals. § 18. Writs of error and appeals may be allowed from the decisions of the circuit courts to the supreme court under such regulations as may be prescribed by law.

COUNTY COURTS.

64. County courts — organization — judge's term. § 19. There shall be elected in each organized county a county judge who shall be judge of the county court of said county, whose term of office shall be two years until otherwise provided by law.

65. Jurisdiction of. § 20. County courts shall be courts of record and shall have original jurisdiction in all matters of probate guardianship and settlement of estates of deceased persons, and such other civil and criminal jurisdiction as may be conferred by law; *Provided*, that such courts shall not have jurisdiction in any case where the debt, damage, claim or value of property involved shall exceed one thousand dollars except in matters of probate guardianship, and the estates of deceased persons. Writs of error and appeal may be allowed from county to

circuit courts, or to the supreme court, in such cases and in such manner as may be prescribed by law; *Provided*, that no appeal or writ of error shall be allowed to the circuit court from any judgment rendered upon an appeal from a justice of the peace or police magistrate for cities or towns.

66. No jurisdiction in case of felony. § 21. The county court shall not have jurisdiction in cases of felony, nor shall criminal cases therein be prosecuted by indictment; but they may have such jurisdiction in criminal matters, not of the grade of felony, as the legislature may prescribe, and the prosecutions therein may be by information or otherwise as the legislature may provide.

JUSTICE OF THE PEACE.

67. Justices of peace — jurisdiction. § 22. Justices of the peace shall have such jurisdiction as may be conferred by law, but they shall not have jurisdiction of any cause wherein the value of the property or the amount in controversy exceeds the sum of one hundred dollars, or where the boundaries or title to real property shall be called in question.

POLICE MAGISTRATE.

68. Police magistrates — provision for. § 23. The legislature shall have power to provide for creating such police magistrates for cities and towns as may be deemed from time to time necessary, who shall have jurisdiction of all cases arising under the ordinances of such cities and towns respectively, and such police magistrates may also be constituted *ex-officio* justices of the peace for their respective counties.

STATE'S ATTORNEY.

69. State's attorneys — powers and duties. § 24. The legislature shall have power to provide for state's attorneys and to prescribe their duties and fix their compensation; but no person shall be eligible to the office of attorney general or state's attorney who shall not at the time of his election be at least twenty-five years of age, and possess all the other qualifications for judges of circuit courts as prescribed in this article.

MISCELLANEOUS.

70. Qualifications of judges. § 25. No person shall be eligible to the office of judge of the circuit or county courts, unless he be learned in the law, be at least twenty-five years of age, and a citizen of the United States; nor unless he shall have resided in this State or Territory at least one year next preceding his election, and at the time of his election

be a resident of the county or circuit, as the case may be, for which he is elected.

71. How chosen — what election. § 26. The judges of the supreme court, circuit courts and county courts shall be chosen at the first election held under the provisions of this constitution, and thereafter as provided by law, and the legislature may provide for the election of such officers on a different day from that on which an election is held for any other purpose, and may for the purpose of making such provision, extend or abridge the term of office for any of such judges then holding, but not in any case more than six months. The term of office of all judges of circuit courts, elected in the several judicial circuits throughout the State, shall expire on the same day.

No inherent reserved power in the people to hold an election to fill vacant elective office. *State ex rel. McGee v. Gardner*, 3 S. D. 553; 54 N. W. 606.

Such election can be had only when and as authorized by law. *Id.*

No election of supreme or circuit judge until law is passed, provided for under section 26, article 5, Constitution. *Id.*

72. Time of holding courts. § 27. The time of holding courts within said judicial circuits and counties shall be as provided by law; but at least one term of the circuit court shall be held annually in each organized county, and the legislature shall make provision for attaching unorganized counties or territory to organized counties for judicial purposes.

73. Special terms. § 28. Special terms of said courts may be held under such regulations as may be provided by law.

74. Judge holding in other circuits. § 29. The judges of the circuit courts may hold courts in other circuits than their own, under such regulations as may be prescribed by law.

75. Salary of judges. § 30. The judges of the supreme court, circuit courts and county courts shall each receive such salary as may be provided by law, consistent with this constitution, and no such judge shall receive any compensation, perquisite or emoluments for or on account of his office in any form whatever, except such salary; *Provided*, that county judges may accept and receive such fees as may be allowed under the land laws of the United States.

76. Judges not to be attorneys, etc. § 31. No judge of the supreme court or circuit courts shall act as attorney or counselor at law, nor shall any county judge act as an attorney or counselor at law in any case which is or may be brought into his court, or which may be appealed therefrom.

77. Circuit and county clerks — election, etc. § 32. There shall be a clerk of the circuit court in each organized county who shall also be

clerk of the county court, and who shall be elected by the qualified electors of such county. The duties and compensation of said clerk shall be as provided by law and regulated by the rules of the court consistent with the provisions of law.

78. Court terms to be fixed. § 33. Until the legislature shall provide by law for fixing the terms of courts, the judges of the supreme, circuit and county courts respectively shall fix the terms thereof.

79. All laws to be general. § 34. All laws relating to courts shall be general and of uniform operation throughout the State, and the organization, jurisdiction, power, proceedings and practice of all the courts of the same class or grade, so far as regulated by law, and the force and effect of the proceedings, judgments and decrees of such courts severally shall be uniform; *Provided, however,* that the legislature may classify the county courts according to the population of the respective counties and fix the jurisdiction and salary of the judges thereof accordingly.

80. Judge to hold no other office, etc. § 35. No judge of the supreme or circuit courts shall be elected to any other than a judicial office or be eligible thereto, during the term for which he was elected such judge. All votes for either of them during such term for any elective office, except that of judge of the supreme court, circuit court or county court, given by the legislature or the people, shall be void.

81. Term of judges, etc. § 36. All judges or other officers of the supreme, circuit or county courts provided for in this article shall hold their offices until their successors respectively are elected or appointed and qualified.

82. Residence of officers — vacancies, how filled. § 37. All officers provided for in this article shall respectively reside in the district, county, precinct, city or town for which they may be elected or appointed. Vacancies in the elective offices provided for in this article shall be filled by appointment until the next general election as follows: All judges of the supreme, circuit and county courts by the governor. All other judicial and other officers by the county board of the counties where the vacancy occurs; in cases of police magistrates, by the municipality.

83. Process in name of State. § 38. All process shall run in the name of the "State of South Dakota." All prosecutions shall be carried on in the name of and by authority of the "State of South Dakota."

Indictment need not recite in terms that it is by authority of the State of South Dakota. *State v. Thompson*, 4 S. D. 95; 55 N. W. 725.

Entitled "State of South Dakota" as plaintiff, sufficient. *Id.*

ARTICLE VI.

BILL OF RIGHTS.

84. Men born equally free. § 1. All men are born equally free and independent, and have certain inherent rights, among which are those of enjoying and defending life and liberty, of acquiring and protecting property, and the pursuit of happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

85. No person deprived of life, etc. § 2. No person shall be deprived of life, liberty or property without due process of law.

86. Right of worship no compulsion. § 3. The right to worship God according to the dictates of conscience shall never be infringed. No person shall be denied any civil or political right, privilege or position on account of his religious opinions, but the liberty of conscience hereby secured shall not be so construed as to excuse licentiousness, the invasion of the rights of others, or justify practices inconsistent with the peace or safety of the State. No person shall be compelled to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious establishment or mode of worship. No money or property of the State shall be given or appropriated for the benefit of any sectarian or religious society or institution.

87. Right of petition. § 4. The right of petition, and of the people peaceably to assemble to consult for the common good and make known their opinions, shall never be abridged.

88. Freedom of speech. § 5. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right. In all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense. The jury shall have the right to determine the fact and the law under the direction of the court.

89. Right of jury trial. § 6. The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy, but the legislature may provide for a jury of less than twelve in any court not a court of record, and for the decision of civil cases by three-fourths of the jury in any court.

Summary punishment for contempt by the court is not a violation of Constitution. *State v. Mitchell*, 3 S. D. 223; 52 N. W. 1052.

Charter authorizing police justice to try cases for violation of ordinance without jury, allowing appeal in such cases only where imprisonment exceeding ten days or fine exceeding \$10 is imposed, violates section 6, article 6, Constitution. *Belatti v. Pierce*, J. P., 8 S. D. 456; 66 N. W. 1068.

90. Right of accused in criminal prosecution. § 7. In all criminal prosecutions the accused shall have the right to defend in person and by counsel; to demand the nature and cause of the accusation against him; to have a copy thereof; to meet the witnesses against him face to face; to have compulsory process served for obtaining witnesses in his behalf, and to a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

91. Offenses, when bailable. § 8. All persons shall be bailable by sufficient sureties, except for capital offenses when proof is evident or presumption great. The privilege of the writ of *habeas corpus* shall not be suspended unless, when in case of rebellion or invasion, the public safety may require it.

92. Incriminating evidence, etc. § 9. No person shall be compelled in any criminal case to give evidence against himself or be twice put in jeopardy for the same offense.

Trial after reversal on writ of error is not second time in jeopardy. *State v. Reddington*, 8 S. D. 315; 66 N. W. 464.

On reversal it is proper to remand case for new trial. *Id.*

93. When person to be held. § 10. No person shall be held for a criminal offense unless on the presentment or indictment of the grand jury or information of the public prosecutor, except in cases of impeachment, in cases cognizable by county courts, by justices of the peace, and in cases arising in the army and navy, or in the militia when in actual service in time of war or public danger; *Provided*, that the grand jury may be modified or abolished by law.

94. Right to be secure. § 11. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause supported by affidavit, particularly describing the place to be searched and the person or thing to be seized.

95. No ex post facto law. § 12. No *ex post facto* law, or law impairing the obligation of contracts or making any irrevocable grant of privilege, franchise or immunity shall be passed.

96. Private property not to be taken, when. § 13. Private property shall not be taken for public use, or damaged, without just compensation as determined by a jury, which shall be paid as soon as it can be ascertained and before possession is taken. No benefit which may accrue to the owner as the result of an improvement made by any private corporation shall be considered in fixing the compensation for property taken

or damaged. The fee of land taken for railroad tracks or other highways shall remain in such owners, subject to the use for which it is taken.

Sections 1302 and 1324, Comp. Laws 1887, not in conflict. *Town of Dell Rapids v. Irving*, 7 S. D. 310; 64 N. W. 149.

Injunction will lie to prevent city from changing grade when party has made improvements on natural grade of the street when no compensation is offered. *Searle v. City of Leod*, 73 N. W. 101.

Meridinal of damage will not vacate order. *Id.*

97. Citizens and aliens — distinction. § 14. No distinction shall ever be made by law between resident aliens and citizens in reference to the possession, enjoyment or descent of property.

98. No imprisonment for debt. § 15. No person shall be imprisoned for debt arising out of or founded upon a contract.

A fine imposed in a civil case may be enforced by imprisonment. *City of Deadwood v. Allen*, 68 N. W. 333.

99. Military power under civil control. § 16. The military shall be in strict subordination to the civil power. No soldier in time of peace shall be quartered in any house without consent of the owner, nor in time of war except in the manner prescribed by law.

100. Taxation. § 17. No tax or duty shall be imposed without the consent of the people or their representatives in the legislature, and all taxation shall be equal and uniform.

101. Privileges. § 18. No law shall be passed granting to any citizen, class of citizens or corporation, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations.

102. Elections free and equal. § 19. Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers in time of war may vote at their post of duty in or out of the State under regulations to be prescribed by the legislature.

103. Courts open. § 20. All courts shall be open, and every man for an injury done him in his property, person or reputation, shall have remedy by due course of law, and right and justice administered without denial or delay.

104. Laws — non-suspension. § 21. No power of suspending laws shall be exercised, unless by the legislature or its authority.

105. Attainder. § 22. No person shall be attainted of treason or felony by the legislature.

106. Excessive bail. § 23. Excessive bail shall not be required, excessive fines imposed, nor cruel punishments inflicted.

107. Right to bear arms. § 24. The right of the citizens to bear arms in defense of themselves and the State shall not be denied.

108. Treason — what comprises. § 25. Treason against the State shall consist only in levying war against it, or in adhering to its enemies or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

109. Political power in the people. § 26. All political power is inherent in the people, and all free government is founded on their authority and is instituted for their equal protection and benefit, and they have the right in lawful and constituted methods to alter or reform their forms of government in such manner as they may think proper. And the State of South Dakota is an inseparable part of the American Union, and the constitution of the United States is the supreme law of the land.

110. Free government, how maintained. § 27. The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.

ARTICLE VII.

ELECTIONS AND RIGHT OF SUFFRAGE.

111. Qualified elector. § 1. Every male person resident of this State who shall be of the age of twenty-one years and upwards, not otherwise disqualified, belonging to either of the following classes, who shall be a qualified elector under the laws of the Territory of Dakota at the date of the ratification of this constitution by the people, or who shall have resided in the United States one year, in this State six months, in the county thirty days, and in the election precinct where he offers his vote ten days next preceding any election, shall be deemed a qualified elector at such election:

First. Citizens of the United States.

Second. Persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States upon the subject of naturalization.

112. Right of suffrage. § 2. The legislature shall at its first session after the admission of the State into the Union, submit to a vote of the electors of the State the following question to be voted upon at the next general election held thereafter, namely: " Shall the word ' male ' be stricken from the article of the constitution relating to elections and

the right of suffrage?" If a majority of the votes cast upon that question are in favor of striking out said word "male," it shall be stricken out and there shall thereafter be no distinction between males and females in the exercise of the right of suffrage at any election in this state.

113. Votes by ballot. § 3. All votes shall be by ballot, but the legislature may provide for numbering ballots for the purpose of preventing and detecting fraud.

114. Biennial elections. § 4. All general elections shall be biennial.

115. Privileges of voters. § 5. Electors shall in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections and in going to and returning from the same. And no elector shall be obliged to do military duty on the days of elections except in time of war or public danger.

116. Voter's residence, etc. § 6. No elector shall be deemed to have lost his residence in this State by reason of his absence on business of the United States or of this State, or in the military or naval service of the United States.

117. No soldier, etc., a resident. § 7. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this State in consequence of being stationed therein.

118. Qualifications of voter. § 8. No person under guardianship, *non compos mentis* or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony be qualified to vote at any election unless restored to civil rights.

119. Women may vote at school elections, etc. § 9. Any woman having the qualifications enumerated in Section 1, of this article, as to age, residence and citizenship, and including those now qualified by the laws of the Territory, may vote at any election held solely for school purposes, and may hold any office in this state except as otherwise provided in this constitution

ARTICLE VIII.

EDUCATION AND SCHOOL LANDS.

120. Public schools. § 1. The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the legislature to establish and maintain a general and uniform system of public schools, wherein tuition shall be without charge, and equally open to all, and to adopt all suitable means to secure to the people the advantages and opportunities of education.

121. Public lands — proceeds of sale for schools. § 2. All proceeds of the sale of public lands that have heretofore been or may hereafter be given by the United States for the use of public schools in the State; all such per centum as may be granted by the United States on the sales of public lands; the proceeds of all property that shall fall to the State by escheat; the proceeds of all gifts or donations to the State for public schools or not otherwise appropriated by the terms of the gift; and all property otherwise acquired for public schools, shall be and remain a perpetual fund for the maintenance of public schools in the State. It shall be deemed a trust fund held by the State. The principal shall forever remain inviolate; and may be increased, but shall never be diminished, and the State shall make good all losses thereof which may in any manner occur.

Not limited by section 2, article 13, Constitution. In re State Bonds, 7 S. D. 42; 63 N. W. Rep. 223.

122. Income on fund. § 3. The interest and income of this fund, together with the net proceeds of all fines for violation of State laws and all other sums which may be added thereto by law, shall be faithfully used and applied each year for the benefit of the public schools of the State, and shall be for this purpose apportioned among and between all the several public school corporations of the State in proportion to the number of children in each, of school age, as may be fixed by law; and no part of the fund, either principal or interest, shall ever be diverted, even temporarily, from this purpose or used for any other purpose whatever than the maintenance of public schools for the equal benefit of all the people of the State.

123. Condition of sale and terms. § 4. After one year from the assembling of the first legislature, the lands granted to the State by the United States for the use of public schools may be sold upon the following conditions and no other: Not more than one-third of all such lands shall be sold within the first five years, and no more than two-thirds within the first fifteen years after the title thereto is vested in the State, and the legislature shall, subject to the provisions of this article, provide for the sale of the same.

The commissioner of school and public lands, the state auditor and the county superintendent of schools of the counties severally, shall constitute boards of appraisal and shall appraise all school lands within the several counties which they may from time to time select and designate for sale at their actual value under the terms of sale.

They shall take care to first select and designate for sale the most valuable lands, and they shall ascertain all such lands as may be of special and peculiar value, other than agricultural, and cause the proper sub-

division of the same in order that the largest price may be obtained therefor.

124. No land sold less than appraised value. § 5. No land shall be sold for less than the appraised value, and in no case for less than ten dollars an acre. The purchaser shall pay one-fourth of the price in cash, and the remaining three-fourths as follows: One-fourth in five years, one-fourth in ten years, and one-fourth in fifteen years; with interest thereon at the rate of not less than six per centum per annum, payable annually in advance, but all such subdivided lands may be sold for cash, provided that upon payment of the interest for one full year in advance, the balance of the purchase price may be paid at any time. All sales shall be at public auction to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall not have been specially subdivided shall be offered in tracts of not more than eighty acres, and those so subdivided in the smallest subdivisions. All lands designated for sale and not sold within four years after appraisal, shall be reappraised by the board of appraisal as hereinbefore provided before they are sold.

125. Sales, how conducted. § 6. All sales shall be conducted through the office of the commissioner of school and public lands as may be prescribed by law, and returns of all appraisals and sales shall be made to said office. No sale shall operate to convey any right or title to any lands for sixty days after the date thereof, nor until the same shall have received the approval of the governor in such form as may be provided by law. No grant or patent for any such lands shall issue until final payment be made.

126. Perpetual funds. § 7. All lands, money or other property donated, granted, or received from the United States or any other source for a university, agricultural college, normal schools or other educational or charitable institution or purpose, and the proceeds of all such lands and other property so received from any source, shall be and remain perpetual funds, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund may be increased, but shall never be diminished, and the interest and income only shall be used. Every such fund shall be deemed a trust fund held by the State, and the State shall make good all losses therefrom that shall in any manner occur.

127. Lands, how appraised and sold. § 8. All lands mentioned in the preceding section shall be appraised and sold in the same manner and

by the same officers and boards under the same limitations and subject to all the conditions as to price, sale and approval provided above for the appraisal and sale of lands for the benefit of public schools, but a distinct and separate account shall be kept by the proper officers of each of such funds.

128. Leasing of lands. § 9. No lands mentioned in this article shall be leased except for pasturage and meadow purposes, and at public auction after notice as hereinbefore provided in case of sale and shall be offered in tracts not greater than one section. All rents shall be payable annually in advance, and no term of lease shall exceed five years, nor shall any lease be valid until it receives the approval of the governor.

129. Improvements by trespassers — no claim, etc. § 10. No claim to any public lands by any trespasser thereon by reason of occupancy, cultivation or improvement thereof, shall ever be recognized; nor shall compensation ever be made on account of any improvement made by such trespasser.

130. Money, how invested. § 11. The moneys of the permanent school and other educational funds shall be invested only in first mortgages upon good improved farm lands within this State as hereinafter provided, or in bonds of school corporations within the State, or in bonds of the United States or of the State of South Dakota. The legislature shall provide by law the method of determining the amounts of said funds, which shall be invested from time to time in such classes of securities respectively, taking care to secure continuous investments as far as possible.

All moneys of said funds which may from time to time be designated for investment in farm mortgages and in the bonds of school corporations, shall for such purpose be divided among the organized counties of the state in proportion to population as nearly as provisions by law to secure continuous investments may permit. The several counties shall hold and manage the same as trust funds, and they shall be and remain responsible and accountable for the principal and interest of all such moneys received by them from the date to [of] receipt until returned because not loaned; and in case of loss of any money so apportioned to any county, such county shall make the same good out of its common revenue. Counties shall invest said money in bonds of school corporations, or in first mortgages upon good improved farm lands within their limits respectively; but no farm loan shall exceed five hundred dollars to any one person, nor shall it exceed one-half the valuation of the land as assessed for taxation, and the rate of interest shall not be less than six per centum per annum, and shall be such other and higher rate as the legislature may provide, and shall be payable semi-annually on the first day of

January and July; *Provided*, that wherever there are moneys of said fund in any county amounting to one thousand dollars that cannot be loaned according to the provisions of this section and any law pursuant thereto, the said sum may be returned to the state treasurer to be intrusted to some other county or counties, or otherwise invested under the provisions of this section.

Each county shall semi-annually, on the first day of January and July, render an account of the condition of the funds intrusted to it to the auditor of state, and at the same time pay to or account to the state treasurer for the interest due on all funds intrusted to it.

The legislature may provide by general law that counties may retain from interest collected in excess of six per centum per annum upon all said funds intrusted to them, not to exceed one per centum per annum. But no county shall be exempted from the obligation to make semi-annual payments to the state treasury of interest at the rate provided by law for such loans, except only said one per centum, and in no case shall the interest so to be paid be less than six per centum per annum.

The legislature shall provide by law for the safe investment of the permanent school and other educational funds, and for the prompt collection of interest and income thereof, and to carry out the objects and provisions of this section.

131. Governor to approve. § 12. The governor may disapprove any sale, lease or investment other than such as are intrusted to the counties.

132. Losses — permanent funded debt. § 13. All losses to the permanent school or other educational funds of this State which shall have been occasioned by the defalcation, negligence, mismanagement or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the State. The amount so audited shall be a permanent funded debt against the State in favor of the fund sustaining the loss upon which not less than six per centum of annual interest shall be paid. The amount of indebtedness so created shall not be counted as a part of the indebtedness mentioned in Article XIII, Section 2.

This section not limited by section 2, article 13. In re State Bonds, 7 S. D. 42; 63 N. W. Rep. 223.

133. Trespass on — protection by legislature. § 14. The legislature shall provide by law for the protection of the school lands from trespass or unlawful appropriation, and for their defense against all unauthorized claims or efforts to divert them from the school fund.

134. Additional taxes. § 15. The legislature shall make such provisions by general taxation, and by authorizing the school corporations to

levy such additional taxes, as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the State.

135. No sectarian appropriations to be made. § 16. No appropriations of lands, money or other property or credits to aid any sectarian school shall ever be made by the State, or any county or municipality within the State, nor shall the State or any county or municipality within the State accept any grant, conveyance, gift or bequest of lands, money or other property to be used for sectarian purposes, and no sectarian instruction shall be allowed in any school or institution aided or supported by the State.

136. No officers to be interested, etc. § 17. No teacher, state, county, township or district school officer shall be interested in the sale, proceeds or profits of any book, apparatus or furniture used or to be used in any school in this State, under such penalties as shall be provided by law.

ARTICLE IX.

COUNTY AND TOWNSHIP ORGANIZATION.

137. New counties to be organized by legislature, etc. § 1. The legislature shall provide by general law for organizing new counties, locating the county seats thereof and changing county lines; but no new counties shall be organized so as to include an area of less than twenty-four congressional townships, as near as may be without dividing a township or fractional township, nor shall the boundaries of any organized county be changed so as to reduce the same to a less area than above specified. All changes in county boundaries in counties already organized, before taking effect, shall be submitted to the electors of the county or counties to be affected thereby, at the next general election thereafter and be adopted by a majority of the votes cast in each county at such election. Counties now organized shall remain as they are unless changed according to the above provisions.

138. Location of county seats. § 2. In counties already organized where the county seat has not been located by a majority vote, it shall be the duty of the county board to submit the location of the county seat to the electors of said county at a general election. The place receiving a majority of all the votes cast at said election shall be the county seat of said county.

139. Changing location. § 3. Whenever a majority of the legal voters of any organized county shall petition the county board to change the location of the county seat which has once been located by a majority

vote, specifying the place to which it is to be changed, said county board shall submit the same to the people of said county at the next general election, and if the proposition to change the county seat be ratified by two-thirds of the votes cast at said election, then the county seat shall be changed, otherwise not. A proposition to change the location of the county seat of any organized county shall not again be submitted before the expiration of four years.

Special act of legislature of 1885, authorizing removal of county seats, superseded by section 3, article 9, Constitution. *Remington v. Higgins*, 6 S. D. 313; 60 N. W. Rep. 73.

140. Townships, how organized. § 4. The legislature shall provide by general law for organizing the counties into townships, having due regard for congressional township lines and natural boundaries, and whenever the population is sufficient and the natural boundaries will permit, the civil township shall be co-extensive with the congressional townships.

141. When county officers to be elected — provision — term. § 5. In each organized county at the first general election held after the admission of the State of South Dakota into the Union, and every two years thereafter, there shall be elected a clerk of the court, sheriff, county auditor, register of deeds, treasurer, state's attorney, surveyor, coroner, and superintendent of schools, whose terms of office respectively shall be two years, and except the clerk of the court, no person shall be eligible for more than four years in succession to any of the above named offices.

142. Further provision by legislature. § 6. The legislature shall provide by general law for such county, township and district officers as may be deemed necessary, and shall prescribe the duties and compensation of all county, township and district officers.

143. Officers to be electors, etc. § 7. All county, township and district officers shall be electors in the county, township or district in which they are elected, provided that nothing in this section shall prevent the holding of school offices by any person, as provided in section 9, Article VII.

ARTICLE X.

MUNICIPAL CORPORATIONS.

144. Legislature provides for organization, etc. § 1. The legislature shall provide by general laws for the organization and classification of municipal corporations. The number of such classes shall not exceed four, and the powers of each class shall be defined by general laws, so that no such corporation shall have any powers, or be subject to any restrictions other than those of all corporations of the same class. The

legislature shall restrict the power of such corporations to levy taxes and assessments, borrow money and contract debts, so as to prevent the abuse of such power.

145. No tax levy except in pursuance of law. § 2. Except as otherwise provided in this constitution, no tax or assessment shall be levied or collected, or debts contracted by municipal corporations, except in pursuance of law, for public purposes specified by law; nor shall money raised by taxation, loan or assessment for one purpose ever be diverted to any other.

Not violated by an order to pay upon a judgment surplus funds after paying current expenses of a city for the fiscal year. *Howard v. City of Huron*, 6 S. D. 180; 60 N. W. Rep. 803.

146. No street railway, etc., without consent. § 3. No street passenger railway or telegraph or telephone lines shall be constructed within the limits of any village, town or city without the consent of its local authorities.

ARTICLE XI.

REVENUE AND FINANCE.

147. Annual tax provided by legislature. § 1. The legislature shall provide for an annual tax sufficient to defray the estimated ordinary expenses of the State, for each year, not to exceed in any one year two mills on each dollar of the assessed valuation of all taxable property in the State, to be ascertained by the last assessment made for State and county purposes.

And whenever it shall appear that such ordinary expenses shall exceed the income of the State for such year, the legislature shall provide for levying a tax for the ensuing year, sufficient with other sources of income, to pay the deficiency of the preceding year, together with the estimated expenses of such ensuing year. And for the purpose of paying the public debt, the legislature shall provide for levying a tax annually, sufficient to pay the annual interest and the principal of such debt within ten years from the final passage of the law creating the debt, provided that the annual tax for the payment of the interest and principal of the public debt shall not exceed in any one year two mills on each dollar of the assessed valuation of all taxable property in the State as ascertained by the last assessment made for the State and county purposes.

Applies to three distinct items of tax: 1. Annual tax for estimated ordinary expenses of the State. 2. Taxation to pay deficiencies from preceding years. 3. Taxation to pay public debt. *In re Limitation of Taxation*, 3 S. D. 156; 54 N. W. Rep. 417.

148. Taxes to be uniform. § 2. All taxes to be raised in this State shall be uniform on all real and personal property, according to its value in money, to be ascertained by such rules of appraisement and as-

assessment as may be prescribed by the legislature by general law, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property. And the legislature shall provide by general law for the assessing and levying of taxes on all corporation property as near as may be by the same methods as are provided for assessing and levying of taxes on individual property.

149. Power to tax corporations. § 3. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the State shall be a party.

150. Same — moneys, credits, etc. § 4. The legislature shall provide for taxing all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also for taxing the notes and bills discounted or purchased, moneys loaned and all other property, effects or dues of every description, of all banks and of all bankers, so that all property employed in banking shall always be subject to a taxation equal to that imposed on the property of individuals.

151. United States, etc., property exempt. § 5. The property of the United States and of the State, county, and municipal corporations, both real and personal, shall be exempt from taxation.

152. Exemptions. § 6. The legislature shall, by general law, exempt from taxation, property used exclusively for agricultural and horticultural societies for school, religious, cemetery and charitable purposes, and personal property to any amount not exceeding in value two hundred dollars, for each individual liable to taxation.

153. What laws void. § 7. All laws exempting property from taxation, other than that enumerated in Sections 5 and 6 of this article, shall be void.

154. No tax levy, except, etc. § 8. No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same, to which the tax only shall be applied.

155. Taxes to be paid state treasury — moneys disbursed. § 9. All taxes levied and collected for State purposes shall be paid into the state treasury. No indebtedness shall be incurred or money expended by the State, and no warrant shall be drawn upon the state treasurer except in pursuance of an appropriation for the specific purpose first made. The legislature shall provide by suitable enactment for carrying this section into effect.

Not apply to contracts for State printing by secretary of State. *Carter v. Thornton*, Secretary of State, 5 S. D. 474; 59 N. W. Rep. 469.

State not liable in action to recover for supplies furnished soldiers, rangers, cavalry and scouts called into service by government to suppress insurrection. *Stanton v. State*, 5 S. D. 515; 59 N. W. Rep. 738.

156. Corporate improvements — taxation. § 10. The legislature may vest the corporate authority of cities, towns and villages with power to make local improvements by special taxation of contiguous property or otherwise. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such tax shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.

157. Profit on State money forbidden, etc. § 11. The making of profit, directly or indirectly, out of state, county, city, town or school district money, or using the same for any purpose not authorized by law, shall be deemed a felony and shall be punished as provided by law.

158. Annual statement. § 12. An accurate statement of the receipts and expenditures of the public moneys shall be published annually in such manner as the legislature may provide.

ARTICLE XII.

PUBLIC ACCOUNTS AND EXPENDITURES.

159. Money paid out upon appropriation only. § 1. No money shall be paid out of the treasury except upon appropriation by law and on warrant drawn by the proper officer.

160. General appropriation bill — to embrace, etc. § 2. The general appropriation bill shall embrace nothing but appropriations for ordinary expenses of the executive, legislative and judicial departments of the State, the current expenses of State institutions, interest on the public debt, and for common schools. All other appropriations shall be made by separate bills, each embracing but one object, and shall require a two-thirds vote of all the members of each branch of the legislature.

161. No extra compensation. § 3. The legislature shall never grant any extra compensation to any public officer, employe, agent or contractor after the services shall have been rendered or the contract entered into, nor authorize the payment of any claims or part thereof created against the State, under any agreement or contract made without express authority of law, and all such unauthorized agreements or contracts shall be null and void: nor shall the compensation of any public officer be increased or diminished during his term of office; *Provided, however,* that the legislature may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

Deputy appointed to hold at pleasure of appointing power does not hold for a "term." *Somers v. State*, 5 S. D. 584; 59 N. W. Rep. 962.

Does not apply to compensation of assistant or deputy with no fixed term of office, but holds at pleasure of appointing power. *Somers v. State*, 6 S. D. 321; 58 N. W. 804.

162. Itemized statement — published annually. § 4. An itemized statement of all receipts and expenditures of the public moneys shall be published annually in such manner as the legislature shall provide, and such statements shall be submitted to the legislature at the beginning of each regular session by the governor with his message.

ARTICLE XIII.

PUBLIC INDEBTEDNESS.

163. State not to be owner — capital stock, etc. § 1. Neither the State nor any county, township or municipality shall loan or give its credit or make donations to or in aid of any individual, association or corporation except for the necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, nor pay or become responsible for the debt or liability of any individual, association or corporation; *Provided*, That the State may assume or pay such debt or liability when incurred in time of war for the defense of the State. Nor shall the State engage in any work of internal improvement.

164. Limit of indebtedness. § 2. For the purpose of defraying extraordinary expenses and making public improvements, or to meet casual deficits or failure in revenue, the State may contract debts never to exceed, with previous debts, in the aggregate \$100,000, and no greater indebtedness shall be incurred except for the purpose of repelling invasion, suppressing insurrection, or defending the State or the United States in war, and provision shall be made by law for the payment of the interest annually, and the principal when due, by tax levied for the purpose, or from other sources of revenue; which law providing for the payment of such interest and principal by such tax or otherwise shall be irrevocable until such debt is paid; *Provided, however*, the State of South Dakota shall have the power to refund the Territorial debt assumed by the State of South Dakota, by bonds of the State of South Dakota.

Appropriating the assessed, but uncollected, taxes of State and issuance of warrants in pursuance thereof to defray current expenses is not incurring indebtedness within meaning of section 2, article 13, Constitution. In re State Warrants, 6 S. D. 518; 62 N. W. Rep. 101.

165. Territorial debt. § 3. That the indebtedness of the State of South Dakota, limited by Section 2 of this article shall be in addition to the debt of the Territory of Dakota assumed by and agreed to be paid by South Dakota.

166. Five per cent. of assessed property. § 4. The debt of any county, city, town, school district or other subdivision, shall never exceed five per centum upon the assessed value of the taxable property therein.

In estimating the amount of indebtedness which a municipality or subdivision may incur, the amount of indebtedness contracted prior to the adoption of this constitution shall be included.

(Adopted by vote election 1896.) Provided, that any county, municipal corporation, civil township, district or other subdivision may incur an additional indebtedness not exceeding ten per centum upon the assessed value of the taxable property therein for the purpose of providing water for irrigation and domestic uses, Provided, further, that no county, municipal corporation or civil township shall be included within any such district or subdivision without a majority vote in favor thereof of the electors, of the county, municipal corporation or civil township as the case may be which is proposed to be included therein, and no such debt shall ever be incurred for any of the purposes in this section provided; unless authorized by a vote in favor thereof of a majority of the electors of such county, municipal corporation, civil township, district or subdivision incurring the same.

167. City, county, etc., indebtedness. § 5. Any city, county, town, school district or any other subdivision incurring indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due, and all laws or ordinances providing for the payment of the interest or principal of any debt shall be irrevocable until such debt be paid.

168. Payment of territorial debt, etc. § 6. In order that the payment of the debts and liabilities contracted or incurred by and in behalf of the Territory of Dakota may be justly and equitably provided for and made, and in pursuance of the requirements of an act of Congress approved Feb. 22, 1889, entitled, "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States," the States of North Dakota and South Dakota, by proceedings of a joint commission, duly appointed under said act, the sessions whereof were held at Bismarck, in said State of North Dakota, from July 16, 1889, to July 31, 1889, inclusive, have agreed to the following adjustment of the amounts of the debts and liabilities of the Territory of Dakota which shall be assumed and paid by each of the States of North Dakota and South Dakota respectively, to-wit:

1. This agreement shall take effect and be in force from and after the admission into the Union, as one of the United States of America, of either the State of North Dakota or the State of South Dakota.

2. The words "State of North Dakota" wherever used in this

agreement, shall be taken to mean the Territory of North Dakota, in case the State of South Dakota shall be admitted into the Union prior to the admission into the Union of the State of North Dakota; and the words "State of South Dakota" wherever used in this agreement, shall be taken to mean the Territory of South Dakota in case the State of North Dakota shall be admitted into the Union prior to the admission into the Union of the State of South Dakota.

3. The said State of North Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of North Dakota, and shall pay all warrants issued under and by virtue of that certain act of the legislative assembly of the Territory of Dakota, approved March 3, 1889, entitled, "An act to provide for the refunding of outstanding warrants drawn on the capitol building fund."

4. The said State of South Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of South Dakota.

5. That is to say: The State of North Dakota shall assume and pay the following bonds and indebtedness, to-wit: Bonds issued on account of the hospital for insane at Jamestown, North Dakota, the face aggregate of which is two hundred and sixty-six thousand dollars; also, bonds issued on account of the North Dakota university at Grand Forks, North Dakota, the face aggregate of which is ninety-six thousand seven hundred dollars; also, bonds issued on account of the penitentiary at Bismarck, North Dakota, the face aggregate of which is ninety-three thousand six hundred dollars; also, refunding capitol building warrants dated April 1, 1889, eighty-three thousand five hundred and seven dollars and forty-six cents.

And the State of South Dakota shall assume and pay the following bonds and indebtedness, to-wit: Bonds issued on account of the hospital for the insane at Yankton, South Dakota, the face aggregate of which is two hundred and ten thousand dollars; also, bonds issued on account of the school for deaf mutes at Sioux Falls, South Dakota, the face aggregate of which is fifty-one thousand dollars; also, bonds issued on account of the university at Vermillion, South Dakota, the face aggregate of which is seventy-five thousand dollars; also, bonds issued on account of the penitentiary at Sioux Falls, South Dakota, the face aggregate of which is ninety-four thousand three hundred dollars; also, bonds issued on account of agricultural college at Brookings, South Dakota, the face aggregate of which is ninety-seven thousand five hundred dollars; also, bonds issued on account of the normal school at Madison, South Dakota, the face aggregate of which is forty-nine thousand four hundred dollars;

also, bonds issued on account of [the] school of mines at Rapid City, South Dakota, the face aggregate of which is thirty-three thousand dollars; also, bonds issued on account of the reform school at Plankinton, South Dakota, the face aggregate of which is thirty thousand dollars; also, bonds issued on account of the normal school at Spearfish, South Dakota, the face aggregate of which is twenty-five thousand dollars; also, bonds issued on account of the soldier's home at Hot Springs, South Dakota, the face aggregate of which is forty-five thousand dollars.

6. The States of North Dakota and South Dakota shall pay one-half each of all liabilities now existing or hereafter and prior to the taking effect of this agreement incurred, except those heretofore and hereafter incurred on account of public institutions, grounds or buildings, except as otherwise herein specifically provided.

7. The State of South Dakota shall pay to the State of North Dakota forty-six thousand five hundred dollars on account of the excess of territorial appropriations for the permanent improvement of territorial institutions which under this agreement will go to South Dakota, and in full of the undivided one-half interest of North Dakota in the territorial library, and in full settlement of unbalanced accounts, and of all claims against the Territory of whatever nature, legal or equitable, arising out of the alleged erroneous or unlawful taxation of the Northern Pacific railroad lands, and the payment of said amount shall discharge and exempt the State of South Dakota from all liability for or on account of the several matters hereinbefore referred to; nor shall either State be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had, which liability would be a liability of the Territory of Dakota had such Territory remained in existence, and which liability shall grow out of matters connected with any public institution, grounds or buildings of the Territory situated or located within the boundaries of the other State.

8. A final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid on account of the public institutions, grounds or buildings located within its boundaries on account of the current appropriations since March 8, 1889; and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on the same account and during the same time. Each State shall be charged with one-half of all other expenses of the Territorial government during the same time. All moneys paid into the treasury during the period from March 8, 1889, to the time of taking effect of this agreement by any county, municipality or person within the limits of the proposed State of North Dakota, shall be credited to the State of North Dakota; and all sums paid into said treasury within the same time by any county, municipality or person within the limits of the proposed State of South

Dakota shall be credited to the State of South Dakota; except that any and all taxes on gross earnings paid into said treasury by railroad corporations since the eighth day of March, 1889, based upon earnings of years prior to 1888, under and by virtue of the act of the legislative assembly of the Territory of Dakota, approved March 7, 1889, and entitled "An act providing for the levy and collection of taxes upon property of railroad companies in this Territory," being Chapter 107 of the Session Laws of 1889, (that is, the part of such sum going to the Territory) shall be equally divided between the States of North Dakota and South Dakota, and all taxes heretofore or hereafter paid into the said treasury under and by virtue of the act last mentioned, based on the gross earnings of the year 1888, shall be distributed as already provided by law, except that so much thereof as goes to the territorial treasury shall be divided as follows: North Dakota shall have so [much] thereof as shall be or has been paid by railroads within the limits of the proposed State of North Dakota and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed State of South Dakota. Each State shall be credited also with all balances of appropriations made by the seventeenth legislative assembly of the Territory of Dakota for the account of public institutions, grounds or buildings situated within its limits, remaining unexpended on March 8, 1889. If there be any indebtedness except the indebtedness represented by the bonds and refunding warrants hereinbefore mentioned, each State shall at the time of such final adjustment of accounts, assume its share of said indebtedness as determined by the amount paid on account of the public institutions, grounds or buildings of such State in excess of the receipts from counties, municipalities, railroad corporations or persons within the limits of said State as provided in this article; and if there should be a surplus at the time of such final adjustment, each State shall be entitled to the amounts received from counties, municipalities, railroad corporations or persons within its limits over and above the amount charged to it.

169. South Dakota obligates itself. § 7. And the State of South Dakota hereby obligates itself to pay such part of the debts and liabilities of the Territory of Dakota as is declared by the foregoing agreement to be its proportion thereof, the same as if such proportion had been originally created by said State of South Dakota as its own debt or liability.

170. Territorial treasurer authorized to issue bonds. § 8. The territorial treasurer is hereby authorized and empowered to issue refunding bonds to the amount of \$107,500, bearing interest not to exceed the rate of four per cent. per annum, for the purpose of refunding the following described indebtedness of the Territory of Dakota, to-wit:

Seventy-seven thousand five hundred dollars 5 per cent. bonds, dated

May 1, 1883, issued for the construction of the west wing of the insane hospital at Yankton, and \$30,000 6 per cent. bonds, dated May 1, 1883, issued for permanent improvements [of the] Dakota penitentiary at Sioux Falls, such refunding bonds, if issued, to run for not more than twenty years, and shall be executed by the governor and treasurer of the Territory, and shall be attested by the secretary under the great seal of the Territory.

In case such bonds are issued by the territorial treasurer as hereinbefore set forth, before the first day of October, 1889, then upon the admission of South Dakota as a State it shall assume and pay said bonds in lieu of the aforesaid territorial indebtedness.

Article 13 divides territorial liabilities and indicates which each should pay. Claim against the Territory within that class is valid against the State of South Dakota. *Jewell Nursery Co. v. State*, 4 S. D. 214; 56 N. W. Rep. 113.

ARTICLE XIV.

STATE INSTITUTIONS.

171. Charitable and penal institutions. § 1. The charitable and penal institutions of the State of South Dakota shall consist of a penitentiary, insane hospital, a school for the deaf and dumb, a school for the blind and a reform school.

172. Under control of State board, etc. § 2. The State institutions provided for in the preceding section shall be under the control of a State board of charities and corrections, under such rules and restrictions as the legislature shall provide; such board to consist of not to exceed five members, to be appointed by the governor and confirmed by the senate. and whose compensation shall be fixed by law.

173. The same. § 3. The state university, the agricultural college, the normal schools and all other educational institutions that may be sustained, either wholly or in part by the state shall be under the control of a board of five members appointed by the governor and confirmed by the senate under such rules and restrictions as the legislature shall provide. The legislature may increase the number of members to nine.

(As amended, election 1896.)

The amendment of 1896, decreasing the number of members of the Board of Regents of Education and defining their powers, is authority for the creation of the new board agreeable to the constitution as amended; although the terms of the old members had not expired. *State ex rel. Adams v. Herreid et al.*, 72 S. D. 93.

Proposing amendment reducing the number of members of board, also terminating the office of present incumbent not in conflict with section 1, article 2, constitution. *Id.*

(Ch. 36, 1895.)

174. Term of office. § 3. From the time of the taking effect of this amendment the terms of office of all trustees heretofore appointed shall cease and determine.

175. Mining and metallurgy in one school. § 5. The legislature shall provide that the science of mining and metallurgy be taught in at least one institution of learning under the patronage of the State.

Vacancy filled by governor pursuant to section 8, article 4, Constitution. State ex rel. Holmes, State's Attorney, v. Finnerud, 7 S. D. 237; 64 N. W. Rep. 121.

ARTICLE XV.

MILITIA.

176. Organization. § 1. The militia of the State of South Dakota shall consist of all able-bodied male persons residing in the State between the ages of eighteen and forty-five years, except such persons as now are, or hereafter may be, exempted by the laws of the United States or of this State.

177. Same. § 2. The legislature shall provide by law for the enrollment, uniforming, equipment and discipline of the militia, and the establishment of volunteer and such other organizations or both, as may be deemed necessary for the protection of the State, the preservation of order and the efficiency and good of the service.

178. Regulations of United States. § 3. The legislature in providing for the organization of the militia shall conform, as nearly as practicable, to the regulations for the government of the armies of the United States.

179. Commissioned officers — term. § 4. All militia officers shall be commissioned by the governor and may hold their commissions for such period of time as the legislature may provide, subject to removal by the governor for cause, to be first ascertained by a court-martial pursuant to law.

180. Militia privileged from arrest. § 5. The militia shall in [all] cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at muster and elections, and in going to and returning from the same.

181. Records to be preserved. § 6. All military records, banners and relics of the State, except when in lawful use, shall be preserved in the office of the adjutant general as an enduring memorial of the patriotism and valor of South Dakota; and it shall be the duty of the legislature to provide by law for the safe keeping of the same.

182. Exemptions. § 7. No person having conscientious scruples against bearing arms shall be compelled to do military duty in time of peace.

ARTICLE XVI.

IMPEACHMENT AND REMOVAL FROM OFFICE.

183. Impeachment. § 1. The house of representatives shall have the sole power of impeachment.

The concurrence of a majority of all members elected shall be necessary to an impeachment.

184. Trial by senate. § 2. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. When the governor or lieutenant governor is on trial the presiding judge of the supreme court shall preside.

185. Officers liable to impeachment. § 3. The governor and other state and judicial officers except county judges, justices of the peace and police magistrates shall be liable to impeachment for drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under the State. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

186. Officers liable to removal. § 4. All officers not liable to impeachment shall be subject to removal for misconduct, malfeasance, or crime or misdemeanor in office or for drunkenness or gross incompetency, in such manner as may be provided by law.

187. When officer cannot act. § 5. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

188. Impeachment of governor. § 6. On trial of an impeachment against the governor the lieutenant governor shall not act as a member of the court.

189. Notice to be served. § 7. No person shall be tried on impeachment before he shall have been served with a copy thereof at least twenty days previous to the day set for trial.

190. Cannot be tried twice. § 8. No person shall be liable to impeachment twice for the same offense.

ARTICLE XVII.

CORPORATIONS.

191. Charter, when to be under State control. § 1. No corporation shall be created or have its charter extended, changed or amended by special laws except those for charitable, educational, penal, or reformatory

purposes, which are to be and remain under the patronage and control of the State; but the legislature shall provide by general laws for the organization of all corporations hereafter to be created.

192. Charters cancelled — when. § 2. All existing charters, or grants of special or exclusive privileges, under which a *bona fide* organization shall not have taken place and business been commenced in good faith at the time this constitution takes effect, shall thereafter have no validity.

193. Legislative restrictions on forfeiture, etc. § 3. The legislature shall not remit the forfeiture of the charter of any corporation now existing nor alter or amend the same nor pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this constitution.

194. Eminent domain. § 4. The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the legislature from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals, and the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well being of the State.

195. Election of directors — manner of voting. § 5. In all elections for directors or managers of a corporation each member or shareholder may cast the whole number of his votes for one candidate or distribute them upon two or more candidates as he may prefer.

196. Agent and home office necessary by foreign corporation. § 6. No foreign corporation shall do any business in this State without having one or more known places of business and an authorized agent or agents in the same upon whom process may be served.

§ 7. No corporation shall engage in any business other than that expressly authorized in its charter, nor shall it take or hold any real estate except such as may be necessary and proper for its legitimate business.

197. Restrictions on stock and bonds, etc. § 8. No corporation shall issue stocks or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law nor without the consent of the persons holding the larger amount in value of the stock first obtained, at a meeting to be held after sixty days' notice given in pursuance of law.

198. Legislature to control charters, etc. § 9. The legislature shall have the power to alter, revise or annul any charter of any corporation now existing and revocable at the taking effect of this constitution, or any that may be created, whenever in their opinion it may be injurious to the citizens of this State, in such a manner, however, that no injustice shall be done to the incorporators. No law hereafter enacted shall create, renew or extend the charter of more than one corporation.

199. No law granting right to construct street railway, etc. § 10. No law shall be passed by the legislature granting the right to construct and operate a street railroad within any city, town or incorporated village without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied by said such street railroad.

200. Telegraph company not to own competing lines, etc. § 11. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph in this State, and to connect the same with other lines; and the legislature shall by general law of uniform operation provide reasonable regulations to give full effect to this section. No telegraph company shall consolidate with or hold a controlling interest in the stock or bonds of any other telegraph company owning a competing line, or acquire by purchase or otherwise any other competing line of telegraph.

201. Railroad companies to have a public office. § 12. Every railroad corporation organized or doing business in this State under the laws or authority thereof shall have and maintain a public office or place in this State for the transaction of its business, where transfers of its stocks shall be made and in which shall be kept for public inspection books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amount owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and place of residence of its officers. The directors of every railroad corporation shall annually make a report, under oath, to the auditor of public accounts or some officer or officers to be designated by law, of all their acts or doings, which report shall include such matters relating to railroads as may be prescribed by law, and the legislature shall pass laws enforcing by suitable penalties the provisions of this section.

202. Rolling stock liable to execution. § 13. The rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and the legislature shall pass no laws exempting such property from execution and sale.

203. Consolidation of railroad companies. § 14. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given out, at least sixty days to all stockholders in such manner as may be provided by law. Any attempt to evade the provisions of this section, by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter.

204. Railways declared public highways. § 15. Railways heretofore constructed or that may hereafter be constructed, in this State, are hereby declared public highways, and all railroads and transportation companies are declared to be common carriers and subject to legislative control; and the legislature shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers and freight as such common carrier from one point to another in this State.

205. Right to construct and operate. § 16. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with the railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.

206. Laws to correct abuses. § 17. The legislature shall pass laws to correct abuses and prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises.

207. Make just compensation for property taken, etc. § 18. Municipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for property taken, injured or destroyed, by the construction or enlargement of their works, highways or improvements, which compensation shall be paid or secured before such taking, injury or destruction. The legislature is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporation or individuals made by viewers or otherwise, and the amount of such damages in all cases of appeal shall, on the demand of either party, be determined by a jury as in other civil cases.

208. Corporations construed. § 19. The term "corporations" as used in this article shall be construed to include all joint stock companies or

associations having any of the powers or privileges of corporations not possessed by individuals or partnerships.

208a. Monopolies and trusts. § 20. Monopolies and trusts shall never be allowed in this State and no incorporated company, copartnership or association of persons in this State shall directly or indirectly combine or make any contract with any incorporated company, foreign or domestic; through their stockholders or the trustees or assigns of such stockholder or with any copartnership or association of persons, or in any manner whatever to fix the prices, limit the production or regulate the transportation of any product or commodity so as to prevent competition in such prices, production or transportation or to establish excessive prices therefor.

The legislature shall pass laws for the enforcement of this section adequate penalties and in the case of incorporated companies, if necessary for that purpose may, as a penalty, declare the forfeiture of their franchises.

(Adopted election 1896.)

ARTICLE XVIII.

BANKING AND CURRENCY.

209. Banking law, if general. § 1. If a general banking law shall be enacted it shall provide for the registry and countersigning by an officer of this State of all bills or paper credit designed to circulate as money, and require security to the full amount thereof, to be deposited with the state treasurer, in the approved securities of the State or of the United States, to be rated at ten per centum below their par value, and in case of their depreciation the deficiency shall be made good by depositing additional securities.

210. Banks, etc., cease within twenty years. § 2. Every bank, banking company or corporation shall be required to cease all banking operation within twenty years from the time of its organization, and promptly thereafter close its business, but shall have corporate capacity to sue or be sued until its business is fully closed, but the legislature may provide by general law for the reorganization of such banks.

211. Shareholders individually responsible. § 3. The shareholders or stockholders of any banking corporation shall be held individually responsible and liable for all contracts, debts and engagements of such corporation to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares or stock; and such individual liabilities shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

ARTICLE XIX.

CONGRESSIONAL AND LEGISLATIVE APPORTIONMENT.

212. Members of house elected at large. § 1. Until otherwise provided by law, the members of the house of representatives of the United States, apportioned to this State, shall be elected by the State at large.

213. Senatorial, etc., districts — how formed. § 2. Until otherwise provided by law, the senatorial and representative districts shall be formed, and the senators and representatives shall be apportioned, as follows:

SENATORIAL DISTRICTS.

District No. 1 shall consist of the county of Union, and be entitled to one senator.

District No. 2 shall consist of the county of Clay, and be entitled to one senator.

District No. 3 shall consist of the county of Yankton, and be entitled to one senator.

District No. 4 shall consist of the county of Bon Homme, and be entitled to one senator.

District No. 5 shall consist of the county of Lincoln, and be entitled to one senator.

District No. 6 shall consist of the county of Turner, and be entitled to one senator.

District No. 7 shall consist of the county of Hutchinson, and be entitled to one senator.

District No. 8 shall consist of the counties of Charles Mix and Douglas, and be entitled to one senator.

District No. 9 shall consist of the county of Minnehaha, and be entitled to two senators.

District No. 10 shall consist of the county of McCook, and be entitled to one senator.

District No. 11 shall consist of the county of Hanson, and be entitled to one senator.

District No. 12 shall consist of the county of Davison, and be entitled to one senator.

District No. 13 shall consist of the county of Aurora, and be entitled to one senator.

District No. 14 shall consist of the county of Brule, and be entitled to one senator.

District No. 15 shall consist of the county of Moody, and be entitled to one senator.

District No. 16 shall consist of the county of Lake, and be entitled to one senator.

District No. 17 shall consist of the county of Miner, and be entitled to one senator.

District No. 18 shall consist of the county of Sanborn, and be entitled to one senator.

District No. 19 shall consist of the counties of Jerauld and Buffalo, and be entitled to one senator.

District No. 20 shall consist of the county of Brookings, and be entitled to one senator.

District No. 21 shall consist of the county of Kingsbury, and be entitled to one senator.

District No. 22 shall consist of the county of Beadle, and be entitled to one senator.

District No. 23 shall consist of the county of Hand, and be entitled to one senator.

District No. 24 shall consist of the counties of Hyde and Hughes, and be entitled to one senator.

District No. 25 shall consist of the counties of Sully and Potter, and be entitled to one senator.

District No. 26 shall consist of the county of Deuel, and be entitled to one senator.

District No. 27 shall consist of the county of Hamlin, and be entitled to one senator.

District No. 28 shall consist of the county of Codington, and be entitled to one senator.

District No. 29 shall consist of the county of Clark, and be entitled to one senator.

District No. 30 shall consist of the county of Spink, and be entitled to one senator.

District No. 31 shall consist of the county of Grant, and be entitled to one senator.

District No. 32 shall consist of the counties of Day and Marshall, and be entitled to one senator.

District No. 33 shall consist of the county of Brown, and be entitled to two senators.

District No. 34 shall consist of the county of Roberts, and be entitled to one senator.

District No. 35 shall consist of the counties of Faulk and Potter, and be entitled to one senator.

District No. 36 shall consist of the counties of Edmunds and Walworth, and be entitled to one senator.

District No. 37 shall consist of the counties of McPherson and Campbell, and be entitled to one senator.

District No. 38 shall consist of the county of Lawrence, and be entitled to two senators.

District No. 39 shall consist of the county of Pennington, and be entitled to one senator.

District No. 40 shall consist of the counties of Meade and Butte, and be entitled to one senator.

District No. 41 shall consist of the counties of Custer and Fall River, and be entitled to one senator.

REPRESENTATIVE DISTRICTS.

District No. 1 shall consist of the county of Union, and be entitled to three representatives.

District No. 2 shall consist of the county of Clay, and be entitled to two representatives.

District No. 3 shall consist of the county of Yankton, and be entitled to three representatives.

District No. 4 shall consist of the county of Lincoln, and be entitled to three representatives.

District No. 5 shall consist of the county of Turner, and be entitled to three representatives.

District No. 6 shall consist of the county of Hutchinson, and be entitled to three representatives.

District No. 7 shall consist of the county of Bon Homme, and be entitled to two representatives.

District No. 8 shall consist of the county of Douglas, and be entitled to one representative.

District No. 9 shall consist of the county of Charles Mix, and be entitled to one representative.

District No. 10 shall consist of the county of Minnehaha, and be entitled to seven representatives.

District No. 11 shall consist of the county of McCook, and be entitled to two representatives.

District No. 12 shall consist of the county of Hanson, and be entitled to two representatives.

District No. 13 shall consist of the county of Davison, and be entitled to two representatives.

District No. 14 shall consist of the county of Aurora, and be entitled to two representatives.

District No. 15 shall consist of the county of Brule, and be entitled to three representatives.

District No. 16 shall consist of the county of Moody, and be entitled to two representatives.

District No. 17 shall consist of the county of Lake, and be entitled to three representatives.

District No. 18 shall consist of the county of Miner, and be entitled to two representatives.

District No. 19 shall consist of the county of Sanborn, and be entitled to two representatives.

District No. 20 shall consist of the county of Jerauld, and be entitled to one representative.

District No. 21 shall consist of the county of Buffalo, and be entitled to one representative.

District No. 22 shall consist of the county of Brookings, and be entitled to three representatives.

District No. 23 shall consist of the county of Kingsbury, and be entitled to three representatives.

District No. 24 shall consist of the county of Beadle, and be entitled to five representatives.

District No. 25 shall consist of the county of Hand, and be entitled to three representatives.

District No. 26 shall consist of the county of Hyde, and be entitled to one representative.

District No. 27 shall consist of the county of Hughes, and be entitled to one representative.

District No. 28 shall consist of the county of Sully, and be entitled to one representative.

District No. 29 shall consist of the county of Deuel, and be entitled to two representatives.

District No. 30 shall consist of the county of Hamlin, and be entitled to two representatives.

District No. 31 shall consist of the county of Codington, and be entitled to three representatives.

District No. 32 shall consist of the county of Clark, and be entitled to three representatives.

District No. 33 shall consist of the county of Spink, and be entitled to five representatives.

District No. 34 shall consist of the county of Faulk, and be entitled to two representatives.

District No. 35 shall consist of the county of Potter, and be entitled to one representative.

District No. 36 shall consist of the county of Grant, and be entitled to two representatives.

District No. 37 shall consist of the county of Roberts, and be entitled to one representative.

District No. 38 shall consist of the county of Day, and be entitled to three representatives.

District No. 39 shall consist of the county of Marshal, and be entitled to two representatives.

District No. 40 shall consist of the county of Brown, and be entitled to eight representatives.

District No. 41 shall consist of the county of Edmunds, and be entitled to two representatives.

District No. 42 shall consist of the county of Walworth, and be entitled to one representative.

District No. 43 shall consist of the county of McPherson, and be entitled to two representatives.

District No. 44 shall consist of the county of Campbell, and be entitled to one representative.

District No. 45 shall consist of the county of Fall River, and be entitled to one representative.

District No. 46 shall consist of the county of Custer, and be entitled to two representatives.

District No. 47 shall consist of the county of Pennington, and be entitled to two representatives.

District No. 48 shall consist of the county of Meade, and be entitled to two representatives.

District No. 49 shall consist of the county of Lawrence, and be entitled to six representatives.

District No. 50 shall consist of the county of Butte, and be entitled to one representative.

ARTICLE XX.

SEAT OF GOVERNMENT.

214. Seat of government — submitted to vote. § 1. The question of the location of the temporary seat of government shall be submitted to a vote of the electors of the proposed State of South Dakota, in the same manner and at the same election at which this constitution shall be submitted, and the place of receiving the highest number of votes shall be the temporary seat of government until a permanent seat of government shall be established as hereinafter provided.*

215. Legislature to provide permanent capitol — submission to people. § 2. The legislature, at its first session after the admission of this State, shall provide for the submission of the question of a place for a permanent seat of government to the qualified voters of the State at the next general election thereafter, and that place which receives a majority of all the votes cast upon that question shall be the permanent seat of government.†

216. Governor's proclamation, etc. § 3. Should no place voted for at said election have a majority of all the votes cast upon this question, the governor shall issue his proclamation for an election to be held in the same manner at the next general election to choose between the two places having received the highest number of votes cast at the first elec-

* Pierre was chosen as temporary seat of government.

† Pierre was chosen as permanent seat of government.

tion on this question. This election shall be conducted in the same manner as the first election for the permanent seat of government, and the place receiving a majority of all the votes cast upon this question shall be the permanent seat of government.

ARTICLE XXI

MISCELLANEOUS.

217. Design of great seal described. § 1. [Seal and coat of arms.] The design of the great seal of South Dakota shall be as follows: A circle within which shall appear in the left foreground a smelting furnace and other features of mining work. In the left background a range of hills. In the right foreground a farmer at his plow. In the right background a herd of cattle and a field of corn. Between the two parts thus described shall appear a river bearing a steamboat. Properly divided between the upper and lower edges of the circle shall appear the legend, "Under God the People Rule," which shall be the motto of the State of South Dakota. Exterior to this circle and within a circumscribed circle shall appear, in the upper part, the words, "State of South Dakota." In the lower part the words, "Great Seal," and the date in Arabic numerals of the year in which the State shall be admitted to the Union.

COMPENSATION OF PUBLIC OFFICERS.

218. Salaries of governor — judges — increased, when — fees forbidden. § 2. The governor shall receive an annual salary of two thousand five hundred dollars; the judges of the supreme court shall each receive an annual salary of two thousand five hundred dollars; the judges of the circuit courts shall each receive an annual salary of two thousand dollars; *Provided*, that the legislature may, after the year one thousand eight hundred and ninety, increase the annual salary of the governor and each of the judges of the supreme court to three thousand dollars, and the annual salary of each of the circuit court judges to two thousand five hundred dollars.

The secretary of state, state treasurer and state auditor shall each receive an annual salary of one thousand eight hundred dollars; the commissioner of school and public lands shall receive an annual salary of one thousand eight hundred dollars; the superintendent of public instruction shall receive an annual salary of one thousand eight hundred dollars; the attorney general shall receive an annual salary of one thousand dollars; the compensation of the lieutenant governor shall be double the compensation of a state senator.

They shall receive no fees or perquisites whatever for the performance of any duties connected with their offices. It shall not be competent for

the legislature to increase the salaries of the officers named in this article except as herein provided.

219. Oath of office. § 3. Every person elected or appointed to any office in this State, except such inferior offices as may be by law exempted, shall, before entering upon the duties thereof, take an oath or affirmation to support the constitution of the United States and of this State and faithfully to discharge the duties of his office.

220. Exemptions. § 4. The right of the debtor to enjoy the comforts and necessities of life shall be recognized by wholesome laws; exempting from forced sale a homestead, the value of which shall be limited and defined by law, to all heads of families, and a reasonable amount of personal property, the kind and value of which to be fixed by general law.

221. Rights of married women. § 5. The real and personal property of any women in this State acquired before marriage, and all property to which she may after marriage become in any manner rightfully entitled, shall be her separate property, and shall not be liable for the debts of her husband.

ARTICLE XXII.

COMPACT WITH THE UNITED STATES.

222. Irrevocable compact — exception. The following article shall be irrevocable without the consent of the United States and the people of the State of South Dakota expressed by their legislative assembly:

Religious freedom. First — That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship.

Disclaimer of public lands — Indian reservations, etc. Second — That we, the people inhabiting the State of South Dakota; do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundary of South Dakota, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States; and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the said State shall never be taxed at a higher rate than the lands belonging to residents of this State; that no taxes shall be imposed by the State of South Dakota on lands or property therein belonging to or which may hereafter be purchased by the United States, or reserved for its use. But nothing herein shall preclude the State of South Dakota from taxing as

other lands are taxed any lands owned or held by any Indian who has severed his tribal relation and has obtained from the United States, or from any person, a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation. All such lands which may have been exempted by any grant or law of the United States shall remain exempt to the extent and as prescribed by such act of Congress.

Pro rata of territorial debt. Third — That the State of South Dakota shall assume and pay that portion of the debts and liabilities of the Territory of Dakota as provided by this constitution.

Maintenance of non-sectarian schools. Fourth — That provision shall be made for the establishment and maintenance of systems of public schools, which shall be opened to all the children of this State, and free from sectarian control.

ARTICLE XXIII.

AMENDMENTS AND REVISIONS OF THE CONSTITUTION.

223. Amendments, how proposed — submitted to vote, when.

§ 1. Any amendment or amendments to this constitution may be proposed in either house of the legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and it shall be the duty of the legislature to submit such proposed amendment or amendments to the vote of the people at the next general election. And if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of this constitution; *Provided*, that the amendment or amendments so proposed shall be published for a period of twelve weeks previous to the date of said election, in such manner as the legislature may provide; and *Provided, further*, that if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendment separately.

A proposition for an amendment to the constitution, entered in full upon the journal of the senate, and by title only upon the journal of the house, is entered upon the journals of both houses as contemplated by the constitution. *State ex rel. Adams v. Herreid et al.*, 72 N. W. Rep. 93.

Amendment may become a law, even though there be no joint resolution authorizing the submission of the question. *Id.*

Not necessary that the amendment appear upon each ticket, it is sufficient that the constitutional amendment proposed appear upon the ballot. *Id.*

Amendment changing number of regents and terminating the office of the present incumbents is a single amendment regulating the number of regents, and is not a double amendment required to be separately stated. *Id.*

224. Convention, how called — delegates, etc. § 2. Whenever two-thirds of the members elected to each branch of the legislature shall think it necessary to call a convention to revise this constitution they shall recommend to the electors to vote at the next election for members of the legislature, for or against a convention; and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall, at their next session, provide by law for calling the same. The convention shall consist of as many members as the house of representatives of the legislature, and shall be chosen in the same manner, and shall meet within three months after their election for the purpose aforesaid.

ARTICLE XXIV.

PROHIBITION.

[To be submitted to a separate vote as provided by the schedule and ordinance.]

225. No person or corporation shall manufacture, or aid in the manufacture for sale, any intoxicating liquor; no person shall sell or keep for sale, as a beverage any intoxicating liquor. The legislature shall by law prescribe regulations for the enforcement of the provisions of this section and provide suitable and adequate penalties for the violation thereof. [Adopted October 1, 1889, by the following vote: For prohibition, 40,234; against prohibition, 34,510.] [Repealed, 1896 election.]

Where equitable action was begun and evidence taken under a territorial district court and before a decision in such case, the same judge being now the judge of the circuit court, may decide the case upon the evidence taken before him as such district judge. *Smith v. Tasini et ux.*, 1 S. D. 632; 48 N. W. Rep. 299.

ARTICLE XXV.

MINORITY REPRESENTATION.

[To be submitted to a separate vote as provided by the schedule and ordinance.]

226. Composition of the house of representatives. § 1. The house of representatives shall consist of three times the number of the members of the senate, and the term of office shall be two years. Three representatives shall be elected in each senatorial district at the first general election held after this constitution takes effect, and every two years thereafter.

227. Cumulative voting. § 2. In all elections of representatives aforesaid each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same, or equal parts thereof, among the candidates as he may see fit; and the candidates highest in votes shall be declared elected. [Rejected October 1, 1889, by the following vote: For minority representation, 24,161; against minority representation, 46,200.]

ARTICLE XXVI.

SCHEDULE AND ORDINANCE.

228. Writs, claims, actions, etc., unchanged. § 1. That no inconvenience may arise from the change of the Territorial government to the permanent State government it is hereby declared that all writs, actions, prosecutions, claims and rights of individuals, and all bodies corporate, shall continue as if no change had taken place in this government; and all process which may be before the organization of the judicial department under this constitution issued under the authority of the Territory of Dakota, within the boundary of this State, shall be as valid as if issued in the name of the State of South Dakota.

229. Fines, penalties, etc., accruing — to whom due. § 2. That all fines, penalties, forfeitures and escheats accruing to the Territory of Dakota, within the boundary of the State of South Dakota, shall accrue to the use of said State.

230. Bonds and obligations for use of State — actions arising, etc. § 3. That all recognizances, bonds, obligations or other undertakings, heretofore taken, or which may be taken before the organization of the judicial department under this constitution shall remain valid, and shall pass over to, and may be prosecuted in the name of the State of South Dakota; and all bonds, obligations or undertakings executed to this Territory, within the boundaries of the State of South Dakota, or to any officer in his official capacity, shall pass over to the proper State authority, and to their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly.

All criminal prosecutions and penal actions, which have arisen, or which may arise before the organization of the judicial department under this constitution, and which shall then be pending, may be prosecuted to judgment and executed in the name of the State.

231. Government of United States — officers to continue — provided, etc. § 4. All officers, civil and military, now holding their offices and appointments in this Territory under the authority of the United States, or under the authority of the Territory of Dakota, shall continue to hold and exercise their respective offices and appointments until superseded under this constitution; *Provided*, that the provisions of the above sections shall be subject to the provisions of the act of congress providing for the admission of the State of South Dakota, approved by the president of the United States on February 22, 1889.

232. When constitution to be voted upon. § 5. This constitution shall be submitted for adoption or rejection to a vote of the electors

qualified by the laws of this Territory to vote at all elections, at the election to be held on Tuesday, Oct. 1, 1889.

233. Form of ballot, etc. At the said election the ballots shall be in the following form:

For the constitution: Yes. No.

For prohibition: Yes. No.

For minority representation: Yes. No.

As a heading to each of said ballots shall be printed on each ballot the following instructions to voters:

All persons desiring to vote for the constitution, or for any of the articles submitted to a separate vote, must erase the word "No."

All persons who desire to vote against the constitution, or against any article submitted separately, must erase the word "Yes."

Any person may have printed or written on his ballot only the words "For the Constitution," or "Against the Constitution," and such ballots shall be counted for, or against the constitution accordingly. The same provision shall apply to articles submitted separately.

In addition to the foregoing election for the constitution and for the articles submitted by this convention for a separate vote thereon, an election shall be held at the same time and places, by the said qualified electors, for the following State officers, to be voted for on the same ballots as above provided for votes on the constitution and separate articles, to-wit:

A governor, lieutenant governor, secretary of state, auditor, treasurer, attorney general, superintendent of public instruction, commissioner of school and public lands, judges of the supreme, circuit and county courts, representatives in congress, state senators, and representatives in the legislature.

All the elections above provided for shall be held in the same manner and form as provided for the election for the adoption or rejection of the constitution. And the names of all the officers above specified to be voted for at such election shall be written or printed upon the same ballots as the vote for or against the constitution.

The judges of election in counting the ballots voted at such election shall count all the affirmative ballots upon the constitution as votes for the constitution; and they shall count all the negative ballots voted at said election upon the constitution as votes against the constitution; and ballots voted at said election upon which neither of said words "Yes" or "No" following the words "For the Constitution" are erased, shall not be counted upon such proposition. And they shall count all affirmative ballots so voted upon the article on prohibition, separately submitted, as votes for such article, and they shall count all negative

ballots so voted upon such article as votes against such article; and ballots upon which neither the words "Yes" or "No" following the words "For prohibition" are erased, shall not be counted upon such proposition; and they shall count all the affirmative ballots so voted upon the article on minority representation, separately submitted, as votes for such article. And they shall count all negative ballots so voted upon such article as votes against such article; and ballots upon which neither of said words "Yes" or "No" following the words "For Minority Representation" are erased, shall not be counted upon such proposition.

If it shall appear in accordance with the returns hereinafter provided for, that a majority of the votes polled at such election, for and against the constitution, are for the constitution, then this constitution shall be the constitution of the State of South Dakota. If it shall appear, according to the returns hereinafter provided for, that a majority of all votes cast at said election for and against "Prohibition" are for prohibition, then said Article XXIV shall be and form a part of this constitution, and be in full force and effect as such from date of said election, but if a majority of said votes shall appear, according to said returns to be against prohibition, then Article XXIV shall be null and void and shall not be a part of this constitution. And if it appear, according to the returns hereinafter provided for, that a majority of all votes cast at said election for and against "Minority Representation" are for minority representation, then Article XXV shall be and form a part of said constitution, and be in full force and effect as such from the date of said election; but if a majority of said votes shall appear, according to said returns, to be against minority representation, then said Article XXV shall be null and void and shall not be a part of this constitution.

At such election the person voted for, for any one of the offices to be filled at such election, who shall receive the highest number of votes cast at said election, shall be declared elected to said office.

234. Election for temporary seat of government — ballot — form of.

§ 6. At the same time and places of election there shall be held by said qualified electors an election for the place of the temporary seat of government.

On each ballot, and on the same ballot on which are the matters voted for or against, as hereinbefore provided, shall be written or printed the words "For Temporary Seat of Government," (Here insert the name of the city, town or place, to be voted for.)

And upon the canvass and return of the vote, made as hereinafter provided for, the name of the city, town or place, which shall have

received the largest number of votes for said temporary seat of government, shall be declared by the governor, chief justice and secretary of the Territory of Dakota, or by any two of them, at the same time that they shall canvass the vote for or against the constitution, together with the whole number of votes cast for each city, town or place, and the officers above named, shall immediately after the result of said election shall have been ascertained, issue a proclamation directing the legislature elected at said election to assemble at said city, town or place so selected, on the day fixed by this schedule and ordinance.

235. Election, how conducted. § 7. The election provided for herein shall be under the provisions of the constitution herewith submitted, and shall be conducted in all respects as elections are conducted under the general laws of the Territory of Dakota, except as herein provided. No mere technicalities or informalities in the manner or form of election, or neglect of any officer to perform his duty with regard thereto, shall be deemed to vitiate or avoid the same, it being the true intent and object of this ordinance to ascertain and give effect to the true will of the people of the State of South Dakota, as expressed by their votes at the polls.

236. Return — result. § 8. Immediately after the election herein provided for, the judges of election at each voting place shall make a true and complete count of all the votes duly cast at such election, and shall certify and return the result of the same, with the names of all the candidates and the number of votes cast for each candidate, and the number of votes cast for and against the constitution, and the number of votes cast for and against prohibition, and the number of votes cast for and against minority representation, and the number of votes cast for each city, town or place for the “temporary seat of government,” to the county clerk, or auditor of the respective counties, together with one of the poll lists and election books used in said election.

237. Duties of county canvassers —certificates, how issued. § 9. Within five days after said election the several boards of county canvassers provided by law for the canvassing of the results of the election, shall make and certify to the secretary of the Territory of Dakota the true and correct return of the total number of votes cast for the constitution, and against the constitution, of the number of votes cast for and against “prohibition,” of the number of votes cast for and against “minority representation,” and the number of votes cast for each city, town or place as the “temporary seat of government,” and of the number of votes cast for each person voted for at such election, except county officers and members of the legislature, and shall transmit the same to the secretary of the Territory of Dakota, by mail, and shall file with the county clerk or auditor of each of said counties a duplicate and certified copy of said return.

Said board of county canvassers shall issue certificates of election to the persons who shall have received the highest number of votes cast for the respective offices of judge of the county court, and representatives in the legislature, and for the state senator or senators.

238. Two counties connected — one district. § 10. When two or more counties are connected in one senatorial or representative district, it shall be the duty of the clerks and auditors of the respective counties to attend at the office of the county clerk of the senior county in the date of organization within twenty days after the date of election, and they shall compare the votes given in the several counties comprising such senatorial and representative district, and such clerks or auditors shall immediately make out a certificate of election to the person having the highest number of votes in such district for state senator or representative or both; which certificate shall be delivered to the person entitled thereto on his application to the clerk of the senior county of such district.

239. Secretary of Territory to receive returns — duties — report to president, etc. § 11. The secretary of the Territory shall receive all returns of election transmitted to him as above provided, and shall preserve the same, and after they have been canvassed as hereinafter provided, and after the admission of the State of South Dakota into the Union, he shall deliver said returns to the proper state officer of said State of South Dakota.

Within fifteen days after said election the secretary of the Territory, with the governor and chief justice thereof, or any two of them, shall canvass such returns and certify the same to the president of the United States, as provided in the enabling act.

They shall also ascertain the total number of votes cast at such election for the constitution and against the constitution; the total number of votes cast for and against prohibition; and the total number of votes cast for and against minority representation; and the total number of votes cast for each city, town, or place as the "temporary seat of government;" and the total number of votes cast for each person voted for, for any office at said election, excepting county judges and members of the legislature, and shall declare the result of said election in conformity with such vote, and the governor of the Territory shall thereupon issue a proclamation at once thereof.

They shall also make and transmit to the State legislature, immediately upon its organization, a list of all the State and judicial officers who shall thus be ascertained to be duly elected.

The various county and district canvassing boards shall make and transmit to the secretary of the Territory the names of all persons de-

clared by them to be elected members of the senate and house of representatives of the State of South Dakota; he shall make separate lists of the senators and representatives so elected, which lists shall constitute the rolls under which the senate and house of representatives shall be organized.

The governor of the Territory shall make and issue certificates of election to the persons who are shown by the canvass to have received the highest number of votes for governor, lieutenant governor, secretary of state, auditor, treasurer, attorney general, superintendent of public instruction, commissioner of school and public lands, and judges of the supreme and circuit courts. Such certificates to be attested by the secretary of the Territory.

240. Apportionment to govern elections. § 12. The apportionment made in this constitution shall govern the elections above provided for for members of the State legislature, until otherwise provided by law.

At the first election held under this ordinance for senators and representatives of the legislature, there shall be elected forty-five senators and one hundred and twenty-four representatives in the State legislature respectively.

241. When legislature to assemble — oaths. § 13. The legislature elected under the provisions of this ordinance and constitution shall assemble at the temporary seat of government on the third Tuesday in October, in the year A. D. 1889, at 12 o'clock noon, and on the first day of their assemblage the governor and other State officers shall take the oath of office in the presence of the legislature. The oath of office shall be administered to the members of the legislature and to the state officers by the chief justice of the Territory, or by any other officer duly authorized by the laws of the Territory of Dakota to administer oaths.

242. Election of senators — certifying thereto. § 14. Immediately after the organization of the legislature and taking the oath of office by the State officers, the legislature shall then and there proceed to the election of two senators of the United States for the State of South Dakota, in the mode and manner provided by the laws of Congress for the election of United States Senators. And the governor and the secretary of the State of South Dakota shall certify the election of the said senators and two representatives in Congress, in the manner require by law.

243. Adjournment — provisions. § 15. Immediately after the election of the United States senators as above provided for, said legislature shall adjourn to meet at the temporary seat of government on the first

Tuesday after the first Monday of January, 1890, at 12 o'clock m.; *Provided, however*, that if the State of South Dakota has not been admitted by proclamation or otherwise at said date, then said legislature shall convene within ten days after the date of the admission of the State into the Union.

244. Powers of legislature defined before admission. § 16. Nothing in this constitution or schedule contained shall be construed to authorize the legislature to exercise any power except such as are necessary to its first organization, and to elect United States Senators, and to adjourn as above provided. Nor to authorize an officer of the executive, administrative or judiciary departments to exercise any duties of his office until the State of South Dakota shall have been regularly admitted into the Union, excepting such as may be authorized by the Congress of the United States.

245. Ordinances to be valid. § 17. The ordinances and schedule enacted by this convention shall be held to be valid for all the purposes thereof.

§ 18. That we, the people of the State of South Dakota, do ordain:

First — That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship.

Second — That we, the people inhabiting the State of South Dakota, do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries of South Dakota; and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the said State shall never be taxed at a higher rate than the lands belonging to residents of this State. That no taxes shall be imposed by the State of South Dakota on lands or property therein belonging to or which may hereafter be purchased by the United States, or reserved for its use. But nothing herein shall preclude the State of South Dakota from taxing as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relation and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation; all such lands which may have been exempted by any grant

or law of the United States shall remain exempt to the extent and as prescribed by such act of Congress.

Third — That the State of South Dakota shall assume and pay that portion of the debts and liabilities of the Territory of Dakota as provided in this constitution.

Fourth — That provision shall be made for the establishment and maintenance of systems of public schools which shall be opened to all the children of this State and free from sectarian control.

Fifth — That jurisdiction is ceded to the United States over the military reservations of Fort Meade, Fort Randall and Fort Sully, heretofore declared by the president of the United States; *Provided*, legal process, civil and criminal, of this State shall extend over such reservations in all cases of which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations.

These ordinances shall be irrevocable without the consent of the United States, and also the people of the said State of South Dakota expressed by their legislative assembly.

246. Tenure of office — state officers — judges, etc. § 19. The tenure of all officers, whose election is provided for in this schedule on the first day of October, A. D. 1889, shall be as follows:

The governor, lieutenant governor, secretary of state, auditor, treasurer, attorney general, superintendent of public instruction, commissioner of school and public lands, judges of county courts, shall hold their respective offices until the first Tuesday after the first Monday in January, A. D. 1891, at twelve o'clock m., and until their successors are elected and qualified.

The judges of the supreme court and circuit courts shall hold their offices until the first Tuesday after the first Monday in January, A. D. 1894, at twelve o'clock m., and until their successors are elected and qualified; subject to the provisions of Sec. 26 of Article V of the constitution.

The terms of office of the members of the legislature elected at the first election held under the provisions of this constitution shall expire on the first Tuesday after the first Monday in January, one thousand eight hundred and ninety-one (1891).

247. First election to be held. § 20. That the first general election under the provisions of this constitution shall be held on the first Tuesday after the first Monday in November, 1890, and every two years thereafter.

§ 21. The following form of ballot is adopted:

CONSTITUTIONAL TICKET.

INSTRUCTIONS TO VOTERS.

All persons desiring to vote for the constitution, or for any of the articles submitted to a separate vote, may erase the word "No."

All persons who desire to vote against the constitution, or any articles separately submitted may erase the word "Yes."

For the Constitution: Yes. No.

For Prohibition: Yes. No.

For Minority Representation: Yes. No.

Foras the temporary seat of government.

For Governor.

.....

For Lieutenant Governor.

.....

For Secretary of State.

.....

For Auditor.

.....

For Treasurer.

.....

For Attorney General.

.....

For Superintendent of Public Instruction.

.....

For Commissioner of School and Public Lands.

.....

For Judges of the Supreme Court.

.....

First District.

Second District.

Third District.

For Judge of the Circuit Court.....Circuit.

.....

For Representatives in Congress.

.....

For State Senator.

.....

For Representatives in the Legislature.

.....

For County Judge.

.....

248. Enrollment of constitution — to whom delivered. § 22. This constitution shall be enrolled and after adoption and signing by the convention shall be delivered to Hon. A. J. Edgerton, the president of the constitutional convention, for safe keeping, and by him to be delivered to the secretary of state as soon as he assumes the duties of his office, and printed copies thereof shall be prefixed to the books containing the laws of the State, and all future editions thereof.

The president of this convention shall also supervise the making of the copy that must be sent to the president of the United States; said copy is to be certified by the president and chief clerk of this convention.

249. Joint agreement by commission — books and records, how divided. § 23. "The agreement made by the joint commission of the constitutional conventions of North and South Dakota concerning the records, books and archives of the Territory of Dakota is hereby ratified and confirmed, which agreement is in the words following: That is to say: "

The following books, records and archives of the Territory of Dakota shall be the property of North Dakota, to-wit:

All records, books and archives in the offices of the governor and secretary of the Territory (except records of articles of incorporation of domestic corporations, returns of election of delegates to the constitutional convention of 1889, for South Dakota, returns of elections held under the so-called local option law in counties within the limits of South Dakota, bonds of notaries public appointed for counties within the limits of South Dakota, papers relating to the organization of counties situate within the limits of South Dakota, all of which records and archives are part of the records and archives of said secretary's office; excepting also census returns from counties situate within the limits of South Dakota and papers relating to requisitions issued upon the application of officers of counties situate within the limits of South Dakota, all of which are part of the records and archives of said governor's office.)

And the following records, books and archives shall also be the property of the State of North Dakota, to-wit:

Vouchers in the office or in the custody of the auditor of this Territory relating to expenditures on account of public institutions, grounds

or buildings situate within the limits of North Dakota; one warrant register in the office of the treasurer of this Territory, being a record of warrants issued under and by virtue of chapter twenty-four of the laws enacted by the eighteenth legislative assembly of Dakota Territory; all letters, receipts and vouchers in the same office now filed by counties and pertaining to counties within the limits of North Dakota; paid and cancelled coupons in the same office representing interest on bonds which said State of North Dakota is to assume and pay; reports of gross earnings of the year 1888 in the same office, made by corporations operating lines of railroad situated wholly or mainly within the limits of North Dakota; records and papers of the office of the public examiner of the second district of the Territory; records and papers of the office of the second district board of agriculture; records and papers in the office of the board of pharmacy of the district of North Dakota.

All records, books and archives of the Territory of Dakota which it is not herein agreed shall be the property of North Dakota, shall be the property of South Dakota.

The following books shall be copied and the copies shall be the property of North Dakota, and the cost of such copies shall be borne equally by the said states of North Dakota and South Dakota. That is to say:

Appropriation ledger for the years ending November, 1889 and 1890 — one volume.

The current warrant auditor's register — one volume.

Insurance record for 1889 — one volume.

Treasurer's cash book "D."

Assessment ledger "B."

Dakota Territory bond register — one volume.

Treasurer's current ledger — one volume.

The original of the foregoing volumes which are to be copied shall at any time after such copying shall have been completed, be delivered on demand to the proper authorities of the State of South Dakota.

All other records, books and archives which it is hereby agreed shall be the property of South Dakota shall remain at the capital of North Dakota until demanded by the legislature of the State of South Dakota, and until the State of North Dakota shall have had a reasonable time after such demand is made to provide copies or abstracts or such portions thereof as the said State of North Dakota may desire to have copies or abstracts of.

The State of South Dakota may also provide copies or abstracts of such records, books and archives which is agreed shall be the property of North Dakota as said State of South Dakota shall desire to have copies or abstracts of.

The expense of all copies or abstracts of records, books and archives

which it is herein agreed may be made, shall be borne equally by said two States.

ALONZO J. EDGERTON,
President of the Constitutional Convention.

R. C. Anderson,
Ireneus Atkinson,
Lyman T. Boucher,
Andrew J. Berdahl,
S. F. Brott,
C. Beuchler,
E. W. Caldwell,
Edgar E. Clough,
C. G. Coats,
Wm. Cook,
George C. Cooper,
Dighton Corson,
Peter Couchman,
Harry Trumbull Craig,
George H. Culver,
J. G. Davies,
W. G. Dickinson,
T. F. Diefendorf,
J. Downing,
H. W. Eddy,
Edward G. Eggerton,
W. Elliott,
H. F. Fellows,
J. A. Fowles,
C. S. Gifford,
W. H. Goddard,
David Hall,
C. J. B. Harris,
Corbley G. Hartley,
M. R. Henninger,
L. H. Hole,
C. A. Houlton,
S. F. Huntley,
H. A. Humphrey,
S. D. Jeffris,
John L. Jolley,

A. G. Kellam,
Jonathan Kimball,
Timothy W. P. Lee,
R. F. Lyons,
W. H. Matson,
A. B. McFarland,
V. T. McGillicuddy,
W. H. Murphy,
Henry Neill,
Wm. S. O'Brien,
Sanford Parker,
S. S. Peck,
Charles H. Price,
Samuel A. Ramsey,
A. O. Ringsrud,
John Scollard,
C. G. Sherwood,
R. A. Smith,
I. R. Spooner,
Wm. Stoddard,
Thomas Sterling,
M. P. Stroupe,
F. W. Thompson,
Stephen B. Van Buskirk,
William Van Epps,
Clarence H. Van Tassel,
Chester R. Wescott,
S. A. Wheeler,
J. F. Whitlock,
J. V. Willis,
W. T. Williams,
H. M. Williamson,
Chauncey L. Wood,
Joshua L. Wood,
F. G. Young,
Joseph Zitka.

Attest:

F. A. BURDICK,
Chief Clerk.

ARTICLE XXVII.

INTOXICATING LIQUORS.

249a. State control. § 1. The manufacture and sale of intoxicating liquors shall be under exclusive state control and shall be conducted by duly authorized agents of the state who shall be paid by salary and not by commissions. All liquors sold shall be first examined by a state chemist and the purity thereof established.

249b. Legislature to provide for enforcement. § 2. The legislature shall by law prescribe regulations for the enforcement of the provisions of this article and provide suitable and adequate penalties for the violation thereof. (Submitted to vote by chapter 38, Laws 1897, and adopted by election, 1898.)

ARTICLE XXVIII.

INVESTMENT OF SCHOOL FUNDS.

§ 1. The several counties of the state shall invest the moneys of the permanent school and endowment funds in bonds of school corporation, state, county, and in municipal bonds or upon good improved farm lands within their limits respectively; under such regulations as the legislature may provide, but no farm loan shall exceed one thousand dollars to any one person, firm or corporation.

(Submitted to vote by chapter 63, Sessions Laws of 1899.)

AMENDMENTS TO CONSTITUTION.

Publication. [Ch. 37, '91.] § 1. That any amendment or amendments to the constitution of this State which shall be proposed by the legislature to be submitted to a vote of the people, shall be published for a period of twelve weeks next previous to the date of the election at which such amendment or amendments are to be voted upon, and the secretary of state shall cause such amendment or amendments so proposed to be separately published in at least one newspaper to be designated by him in each judicial circuit of this State for said period of twelve weeks next preceding such election.

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The Enabling Act.

[Approved February 22, 1889.]

AN ACT to Provide for the Division of Dakota into two States, and to Enable the People of North Dakota, South Dakota, Montana and Washington to Form Constitutions and State Governments, and to be Admitted into the Union on an Equal Footing with the Original States, and to Make Donations of Public Lands to such States.

250. Formation of State authorized. Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana and Washington, as at present described may become the States of North Dakota, South Dakota, Montana and Washington respectively, as hereinafter provided.

251. Boundaries of State. § 2. The area comprising the Territory of Dakota shall, for the purposes of this act, be divided on the line of the seventh standard parallel produced due west to the western boundary of said Territory; and the delegates elected as hereinafter provided to the Constitutional Convention in districts north of said parallel shall assemble in convention, at the time prescribed in this act, at the city of Bismarck; and the delegates elected in districts south of said parallel shall, at the same time, assemble in convention at the city of Sioux Falls.

252. Convention — delegates — election — apportionment — proclamation — time. § 3. That all persons who are qualified by the laws of said territories to vote for representatives to the Legislative Assemblies thereof, are hereby authorized to vote for and choose delegates to form conventions in said proposed states; and the qualifications for delegates to such conventions shall be such as by the laws of said territories, respectively, persons are required to possess to be eligible to the Legislative Assemblies thereof, and the aforesaid delegates to form said conventions shall be apportioned within the limits of the proposed states in such districts as may be established as herein provided, in proportion to the population in each of said counties and districts, as near as may be, to be ascertained at the time of making said apportionments.

by the persons hereinafter authorized to make the same, from the best information obtainable, in each of which districts three delegates shall be elected, but no elector shall vote for more than two persons for delegates to such conventions; that said apportionments shall be made by the Governor, the Chief Justice and the Secretary of said territories; and the Governors of said territories shall, by proclamation, order an election of the delegates aforesaid in each of said proposed states, to be held on the Tuesday after the second Monday in May, 1889, which proclamation shall be issued on the 15th day of April, 1889; and such election shall be conducted, the returns made, the result ascertained and the certificates to the persons elected to such convention issued in the same manner as is prescribed by the laws of the said territories regulating elections therein for delegates to congress; and the number of votes cast for delegates in each precinct shall also be returned. The number of delegates to said conventions respectively, shall be seventy-five; and all persons resident in said proposed states who are qualified voters of said territories as herein provided shall be entitled to vote upon the election of delegates, and under such rules and regulations as said conventions may prescribe not in conflict with this act, upon the ratification or rejection of the constitutions.

253. Conventions meet — constitution of United States — requirements — religion — Indian lands, etc. — debts — taxation. § 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said territories, except the delegates elected in South Dakota, who shall meet at the city of Sioux Falls, on the 4th day of July, 1889, and, after organization, shall declare on behalf of the people of said proposed states that they adopt the Constitution of the United States; whereupon the said conventions shall be, and are hereby authorized to form Constitutions and State Governments for said proposed states, respectively. The constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not to be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said conventions shall provide by ordinances irrevocable without the consent of the United States and the people of said states:

First. That the perfect toleration of religious sentiment shall be secured, and that no inhabitant of said states shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all

lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the said states shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said states from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation, but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such act of Congress may prescribe.

Third. That the debts and liabilities of said territories shall be assumed and paid by said states respectively.

Fourth. That provisions shall be made for the establishment and maintenance of systems of public schools, which shall be open to all children of said state, and free from sectarian control.

254. Elections on constitution — returns — archives and records.

§ 5. That the convention which shall assemble at Bismarck shall form a Constitution and State Government for a state to be known as North Dakota, and the convention which shall assemble at Sioux Falls shall form a Constitution and State Government for a state to be known as South Dakota; *Provided*, That at the election for delegates to the Constitutional Convention in South Dakota, as hereinbefore provided, each elector may have written or printed on his ballot, the words, "For the Sioux Falls Constitution," or the words, "Against the Sioux Falls Constitution," and the votes on this question should be returned and canvassed in the same manner as for the election provided for in Section 3 of this act; and if a majority of all votes cast on this question shall be "For the Sioux Falls Constitution" it shall be the duty of the convention which may assemble at Sioux Falls, as herein provided, to submit to the people of South Dakota, for ratification or rejection at the election hereinafter provided for in this act, the Constitution framed at Sioux Falls, and adopted November 3, 1885, and also the articles and

propositions separately submitted at that election, including the question of locating the temporary seat of government, with such changes only as relate to the name and boundary of the proposed state, to the reapportionment of the judicial and legislative districts, and such amendments as may be necessary in order to comply with the provisions of this act; and if a majority of the votes cast on the ratification or rejection of the Constitution shall be for the Constitution irrespective of the articles separately submitted, the State of South Dakota shall be admitted as a state in the Union under said Constitution as hereinafter provided, but the archives, records and books of the Territory of Dakota shall remain at Bismarck, the capital of North Dakota, until an agreement in reference thereto is reached by said states. But if at the election for delegates to the Constitutional Convention in South Dakota a majority of all the votes cast at that election shall be "Against the Sioux Falls Constitution," then, and in that event, it shall be the duty of the convention which will assemble at the city of Sioux Falls on the Fourth day of July, 1889, to proceed to form a Constitution and State Government as provided in this act the same as if that question had not been submitted to a vote of the people of South Dakota.

255. Appointment of joint commission — number — division of property — debts. § 6. It shall be the duty of the Constitutional Conventions of North Dakota and South Dakota to appoint a Joint Commission, to be composed of not less than three members of each convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said territory, and to agree upon an equitable division of all property belonging to the Territory of Dakota, the disposition of all public records, and also adjust and agree upon the amounts of the debts and liabilities of the Territory, which shall be assumed and paid by each of the proposed states of North Dakota and South Dakota; and the agreement reached respecting the territorial debts and liabilities shall be incorporated in the respective constitutions, and each of said states shall obligate itself to pay its proportion of such debts and liabilities the same as if they had been created by such states respectively.

256. Territorial provisions — rejection of constitution — either State — proclamation of governor. § 7. If the constitutions formed for both North Dakota and South Dakota shall be rejected by the people at the elections for the ratification or rejection of their respective constitutions as provided for in this act, the territorial government of Dakota shall continue in existence the same as if this act had not been passed. But if the constitution formed for either North Dakota or South Dakota shall be rejected by the people, that part of the territory so rejecting its proposed constitution shall continue under the territorial government of

the present Territory of Dakota, but shall, after the state adopting its constitution is admitted into the Union, be called by the name of the Territory of North Dakota or South Dakota, as the case may be; *Provided*, That if either of the proposed states provided for in this act shall reject the constitution which may be submitted for ratification or rejection at the election provided therefor, the Governor of the territory in which such proposed constitution was rejected shall issue his proclamation reconvening the delegates elected to the convention which formed such rejected constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another constitution or to amend the rejected constitution, and shall submit such new constitution or amended constitution to the people of the proposed state for ratification or rejection, at such time as said convention may determine; and all the provisions of this act, so far as applicable, shall apply to such convention so reassembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed state.

257. Constitutional convention in South Dakota — North Dakota — submission to people — election — president's proclamation. § 8. The Constitutional Convention which may assemble in South Dakota shall provide by ordinance for resubmitting the Sioux Falls Constitution of 1885, after having amended the same as provided in Section 5 of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, 1889; but if said Constitutional Convention is authorized and required to form a new constitution for South Dakota, it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection at an election to be held in said proposed state on the said first Tuesday in October. And the Constitutional Conventions which may assemble in North Dakota, Montana and Washington, shall provide in like manner for submitting the constitutions formed by them to the people of said proposed states respectively, for ratification or rejection, at elections to be held in said proposed states on the said first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed states shall vote directly for or against the proposed constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the Secretary of each of said territories, who, with the Governor and Chief Justice thereof, or any two of them, shall canvass the same, and if a majority of the legal votes cast shall be for the constitution, the Governor shall certify the result to the President of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of the said constitution, articles,

propositions and ordinances. And if the constitutions and governments of said proposed states are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the President of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed states which have adopted constitutions and formed state governments, as herein provided, shall be deemed admitted by Congress into the Union, under and by virtue of this act, on an equal footing with the original states from and after the date of said proclamation.

258. Representatives — election — officers. § 9. That until the next general census, or until otherwise provided by law, said states shall be entitled to one representative in the House of Representatives of the United States, except South Dakota which shall be entitled to two; and the representatives of the Fifty-first Congress, together with the governors and other officers provided for in said constitutions, may be elected on the same day of the election for the ratification or rejection of the constitutions; and until said state officers are elected and qualified under the provisions of each constitution and the states, respectively, are admitted into the Union, the territorial officers shall continue to discharge the duties of their respective offices in each of said territories.

259. Lands for schools — reservations, etc. § 10. That upon the admission of each of said states into the Union sections numbered 16 and 36 in every township of said proposed states, and where such sections or any part thereof have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the Legislature may provide, with the approval of the Secretary of the Interior; *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act nor shall any lands embraced in Indian, military or other reservations of any character, be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

260. Lands — sale and lease — pre-emption, homestead, etc. § 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than \$10 per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands

may, under such regulation as the Legislature shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

261. Grants of lands for public buildings. § 12. That upon the admission of each of said states into the Union, in accordance with the provision of this act fifty sections of the unappropriated public lands within said states, to be selected and located in legal subdivisions as provided in Section 10 of this act, shall be, and are hereby, granted to said states for the purpose of erecting public buildings at the capital of said states for legislative, executive and judicial purposes.

262. School lands — five per cent. for improvements. § 13. That five per centum of the proceeds of the sales of public lands lying within said states which shall be sold by the United States subsequent to the admission of said states into the Union, after deducting all the expenses incident to the same, shall be paid to the said states, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said states, respectively.

263. Lands seventy-two sections for university purposes — fund — insane asylums. § 14. That the lands granted to the territories of Dakota and Montana by the act of February 18, 1881, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes," are hereby vested in the states of South Dakota, North Dakota and Montana respectively, if such states are admitted into the Union as provided in this act, to the extent of the full quantity of seventy-two sections to each of said states, and any portion of said lands that may not have been selected by either of said territories of Dakota or Montana may be selected by the respective states aforesaid; but said act of February 18, 1881, shall be so amended as to provide that none of said lands shall be sold for less than \$10 per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said states severally, and the income thereof be used exclusively for university purposes. And such quantity of the lands authorized by the fourth section of the act of July 17, 1854, to be reserved for university purposes in the Territory of Washington, as, together with the land confirmed to the vendees of the territory by the act of March 14, 1864, will make the full quantity of seventy-two entire sections, are hereby granted in like manner to the state of Washington for the purposes of a university in said state. None of the lands granted in this

section shall be sold at less than \$10 per acre; but said lands may be leased in the same manner as provided in Section 11 of this act. The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of said states, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college or university. The section of land granted by the act of June 16, 1880, to the Territory of Dakota, for an Asylum for the Insane shall, upon the admission of said State of South Dakota into the Union, become the property of said state

264. Land — grants for penitentiaries. § 15. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating moneys for the erection of a penitentiary in the Territory of Dakota," approved March 2, 1881, together with the buildings thereon, be, and the same is hereby granted, together with any unexpended balances of the moneys appropriated therefor by said act, to said State of South Dakota, for the purposes therein designated, and the States of North Dakota and Washington shall, respectively, have like grants for the same purposes, and subject to like terms and conditions as provided in said act of March 2, 1881, for the Territory of Dakota. The penitentiary at Deer Lodge City, Montana, and all lands connected therewith and set apart and reserved therefor, are hereby granted to the state of Montana.

265. Lands — agricultural colleges — proviso. § 16. That 90,000 acres of land to be selected and located as provided in Section 10 of this act, are hereby granted to each of said states except to the state of South Dakota, to which 120,000 acres are granted for the use and support of agricultural colleges in said states, as provided in the acts of congress making donations of lands for such purposes.

266. What grants repealed — swamp lands — salt springs — grants made for public use — North and South Dakota. § 17. That in lieu of the grant of land for purposes of internal improvement made to new states by the eighth section of the act of September 4, 1841, which act is hereby repealed as to the states provided for by this act, and in lieu of any claim or demand by the said states, or either of them, under the act of September 28, 1850, and Section 2479 of the Revised Statutes, making a grant of swamp and overflowed lands to certain states, which grant it is hereby declared is not extended to the states provided for in this act, and in lieu of any grant of saline lands to said states, the following grants of land are hereby made, to-wit:

To the State of South Dakota: For the School of Mines, 40,000 acres; for the Reform School, 40,000 acres; for the Deaf and Dumb Asylum,

40,000 acres; for the Agricultural College, 40,000 acres; for the University, 40,000 acres; for the State Normal Schools, 80,000 acres; for public buildings at the capital of said state, 50,000 acres, and for such other educational and charitable purposes as the legislature of said state may determine, 170,000 acres; in all, 500,000 acres.

To the State of North Dakota a like quantity of land as is in this section granted to the state of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the State of Montana: For the establishment and maintenance of a School of Mines, 100,000 acres; for the State Normal Schools, 100,000 acres; for Agricultural Colleges, in addition to the grant hereinbefore made for that purpose, 50,000 acres; for the establishment of the State Reform School, 50,000 acres; for the establishment of a Deaf and Dumb Asylum, 50,000 acres; for public buildings at the capital of the state, in addition to the grant hereinbefore made for that purpose, 150,000 acres.

To the State of Washington: For the establishment and maintenance of a Scientific School, 100,000 acres; for the State Normal School, 100,000 acres; for public buildings at the state capital in addition to the grant hereinbefore made for that purpose, 100,000 acres; for state, charitable, educational, penal and reformatory institutions, 200,000 acres.

That the states provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided for in this act. And the lands granted by this section shall be held, appropriated and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective states may severally provide.

287. Mineral lands exempted — what taken instead. § 18. That all mineral lands shall be exempted from the grants of this act. But if sections 16 and 36, of any subdivision or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, said states are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said states, in lieu thereof, for the use and benefit of the common schools of said state.

288. Secretary of Interior to select — deductions. § 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved and unappropriated public lands of the United States within the limits of the respective states entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific

objects to said states the number of acres in each heretofore donated by Congress to said territories for similar objects.

269. Expenses of conventions provided for — unexpended appropriations. § 20. That the sum of \$20,000 or so much thereof as may be necessary, is hereby appropriated, out of any money in the treasury not otherwise appropriated, to each of said territories for defraying the expenses of the said conventions, except to Dakota for which the sum of \$40,000 is so appropriated, \$20,000 each for South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the treasury of the United States.

270. Judicial districts in each state, how constituted — courts — judges — salary — terms — officers and duties. § 21. That each of said states, when admitted as aforesaid, shall constitute one judicial district, the names thereof to be the same as the names of the states, respectively; and the circuit and district courts therefor shall be held at the capital of such state for the time being, and each of said districts shall, for judicial purposes, until otherwise provided be attached to the Eighth judicial circuit, except Washington and Montana, which shall be attached to the Ninth judicial circuit. There shall be appointed for each of said districts one district judge, one United States attorney and one United States marshal. The judge of each of said districts shall receive a yearly salary of \$3,500, payable in four equal installments, on the first days of January, April, July and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said state. The regular terms of said court shall be held in each district at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district courts for each of said districts and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney and clerks of the circuit and district courts of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States, and shall for the services they may perform, receive the fees and compensation allowed

by law to other similar officers and persons performing similar duties in the State of Nebraska.

271. Appeals and writs of error — suits, how prosecuted. § 22. That all cases of appeal or writ of error heretofore prosecuted and now pending in the supreme court of the United States upon any record from the supreme court of either of the territories mentioned in this act, or that may hereafter lawfully be prosecuted upon any record from either of said courts, may be heard and determined by said supreme court of the United States. And the mandate of execution or of further proceedings shall be directed by the supreme court of the United States to the circuit or district court hereby established within the state succeeding the territory from which such record is or may be pending, or to the supreme court of such state, as the nature of the case may require; *Provided*, That the mandate of execution or of further proceedings shall, in cases arising in the Territory of Dakota, be directed by the supreme court of the United States to the circuit or district court of the district of South Dakota, or to the supreme court of the State of South Dakota, or to the circuit or district court of the district of North Dakota, or to the supreme court of the State of North Dakota, as the nature of the case may require. And each of the circuit, district and state courts, herein named, shall, respectively be the successor of the supreme court of the territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts respectively with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the supreme court of either of the territories mentioned in this act, in any case arising within the limits of any of the proposed states prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the supreme court of the United States, as they shall have had by law prior to the admission of said state into the Union.

272. What courts have cognizance of pleading territorial suits — circuit, supreme or district. § 23. That in respect to all cases, proceedings and matters now pending in the supreme or district courts of either of the territories mentioned in this act at the time of the admission into the union of either of the states mentioned in this act, and arising within the limits of any such state, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said territory; and in respect to all other cases, proceedings and matters pending in the

supreme or district courts of any of the territories mentioned in this act at the time of the admission of such territory into the union, arising within the limits of said proposed state, the courts established by such state shall, respectively, be the successors of said supreme and territorial courts; and all the files, records, indictments and proceedings relating to any such cases shall be transferred to such circuit, district and state courts, respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause or proceeding now pending, or that prior to the admission of any of the states mentioned in this act, shall be pending in any territorial court in any of the territories mentioned in this act, shall abate by the admission of any such state into the union, but the same shall be transferred and proceeded within the proper United States circuit, district or state court, as the case may be; *Provided*, however, that in all civil actions, causes and proceedings, in which the United States is not a party, transfers shall not be made to the circuit and district courts of the United States except upon the written request of one of the parties to such action or proceeding filed in the proper court; and in the absence of such request such cases shall be proceeded with within the proper state courts.

273. Election of State officers — conventions to provide manner — representatives — proviso. § 24. That the constitutional conventions may, by ordinance, provide for the election of officers for full state governments, including members of the legislatures and representatives in the fifty-first congress; but said state governments shall remain in abeyance until the states shall be admitted into the union respectively, as provided in this act. In case the constitution of any of said proposed states shall be ratified by the people, but not otherwise, the legislature thereof may assemble, organize and elect two senators of the United States; and the governor and secretary of state of such proposed state shall certify the election of the senators and representatives in Congress; and when such state is admitted into the union, the senators and representatives shall be entitled to be admitted to seats in congress, and to all the rights and privileges of senators and representatives of other states in the congress of the United States; and the officers of the state governments formed in pursuance of said constitutions, as provided by the constitutional conventions, shall proceed to exercise all the functions of state officers; and all laws in force made by said territories, at the time of their admission into the union, shall be in force in said states, except as modified or changed by this act, or by the constitutions of the states respectively.

274. All conflicting acts repealed. § 25. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the legislatures of said territories, or by congress, are hereby repealed.

Political Code.

CHAPTER 1. THE LEGISLATURE.

ARTICLE 1. GENERAL PROVISIONS.

[Compiled Laws, 1887; adopted March 5, 1889; see § 42a.]

1. **Members elected biennially.** The members of both branches of the legislative assembly shall be elected at the general election in 1878, and biennially thereafter, and shall hold their respective offices for the term of two years. [C. L. 1.]

2. **Privilege of members.** No member or officer of the council or house of representatives, while in actual attendance upon the duties of his office, shall be liable to arrest upon civil process. [C. L. 3.]

3. **Punishment by each house for offenses.** Each house may punish, as a contempt, by imprisonment, a breach of its privileges or the privileges of its members; but only for one or more of the following offenses, to wit:

1. Knowingly arresting a member or officer of the house, or procuring such member or officer to be arrested, in violation of his privileges from arrest.

2. That of disorderly conduct in the immediate view of the house, and directly tending to interrupt its proceedings.

3. That of refusing to attend to be examined as a witness either before the house, or a committee, or before any person authorized to take testimony in legislative proceedings.

4. That of giving or offering a bribe to a member, or of attempting, by menace, or other corrupt means or device, directly or indirectly, to control or influence a member in giving his vote, or to prevent his giving the same; but the term of imprisonment which such house may impose for any contempt specified in this section, shall not extend beyond the same session of the legislature. [C. L. 4.]

4. **Contempt a misdemeanor.** Every person who shall be guilty of any contempt specified in the preceding section, shall, also, be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars, or both such fine and imprisonment, at the discretion of the court. [C. L. 5.]

5. Administering oaths. The speaker of the house of representatives and the president of the council, the governor, or any of the justices of the supreme court are authorized to administer the oath of office to the members and officers of the respective houses. [C. L. 6.]

6. Oath of members. The members shall be required to take and subscribe the following oath:

You do solemnly swear that you will support the constitution of the United States and the constitution of the state of South Dakota, and that as a member of this house of representatives (or this council, as the case may be), you will not propose or assent to any bill, vote or resolution which shall appear to you injurious to the people, nor do or consent to any act or thing whatever that shall have a tendency to lessen or abridge their rights and privileges as declared by the constitution of the United States, and the constitution of the state of South Dakota, but will, in all things, conduct yourself as a faithful, honest representative and guardian of the people, according to the best of your judgment and abilities. So help you God.

[C. L. 7.]

7. Committee may administer oath. Any member of the council or house of representatives, while acting as a committee of the house of which he is a member, shall have authority to administer oaths to such persons as shall be examined before the committee of which he is a member. [C. L. 8.]

8. Contested seats. In case the right of any person to a seat in either house of the legislative assembly shall be contested, the right of such person to a seat as aforesaid shall be determined by the house in which he claims such seat as a member; and each house shall in all cases be the judge of the qualifications of its members. [C. L. 9.]

9. Officers of respective houses. The officers of the respective houses shall consist of a president of the council, who must be a member of that body; a speaker of the house, who must be a member of that body; and for each house, one chief clerk, one enrolling and engrossing clerk, one sergeant-at-arms, one doorkeeper, one messenger, one watchman and one chaplain. [C. L. 10.]

10. Officers elected *viva voce* — oath. The said officers shall be elected, *viva voce*, by the members of each house, respectively, at such time, after the meeting of said house, as the members thereof shall see proper, and shall be required to take and subscribe the same oath as is provided for other civil officers; but neither house shall transact any business other than the election or appointment of officers, until said officers are elected or appointed *pro tem.*, on motion. [C. L. 11.]

11. Clerks to keep journals, etc. It shall be the duty of the chief clerk of the council and chief clerk of the house of representatives to keep correct journals of the proceedings of their respective houses; to have the custody of all records, accounts, and other papers committed to them, and at the close of each session of the legislative assembly,

shall deposit for safe keeping in the office of the secretary of the state, all books, bills, documents, resolutions and papers in the possession of the legislature, correctly labeled, folded, and classified, and generally to perform such duties as shall be assigned them by their respective houses; *provided*, the journals of the two houses need not be deposited as above provided until the expiration of forty days after the adjournment of the legislative assembly. [C. L. 12.]

12. Clerks to prepare and index journals, etc. It shall be the duty of the chief clerk of the council and the chief clerk of the house, at the close of each session, to prepare for the press and superintend the publication of the journals of the proceedings of their respective houses, and to affix an index thereto; and to transcribe, into a book kept for that purpose, the documents accompanying the message of the governor, or by him sent to either house, other than those entered on the journal, or the documents reported to either branch of the legislative assembly by any public officer of the state, in pursuance of law, for which service they shall be allowed such compensation as the legislature shall from time to time determine; but in no event to be less than their regular per diem, for the time actually employed in performing said labor. And the state auditor is hereby instructed on presentation of a verified account for not to exceed sixty days, and of proof that the records have been completed as herein required, to draw his warrant on the state treasurer for the amount of such account. [C. L. 13.]

13. Clerks to make roll of members. It shall be the duty of the said chief clerks, at the opening of every session of the legislative assembly, to make a correct roll of the members of their houses, respectively, to whom certificates of election have been issued by the proper officers, which certificates shall be filed by said secretary and chief clerk. [C. L. 14.]

14. Sessions called to order by chief clerks of last session. In all cases the said chief clerks, serving at the close of a session, shall remain in office until the organization of the next regular session of the legislature and at twelve o'clock, meridian, on the day appointed by law for the meeting of the legislative assembly, the said chief clerks, or in the absence of either, then some member or other person appointed by the members present, shall call the members of their respective houses so enrolled to order, when the members may proceed to the election of the necessary officers. The term of office of all officers of the council and house of representatives shall expire with the close of the session at which they were elected, except the chief clerk of the council and the chief clerk of the house, for the purposes herein designated. [C. L. 15.]

15. Compensation of officers — how certified. The compensation prescribed by law for the officers of the council, shall be certified by the president thereof, and attested by the chief clerk; and the compensation that may be due to the officers of the house of representatives shall be certified by the speaker thereof, and attested by the chief clerk, which said certificates, when made out as aforesaid, shall be sufficient evidence to the secretary of the state of each person's claim. [C. L. 16.]

16. Either house may remove officers. It shall be competent at any time during a session of the legislative assembly, for either house, by a vote of a majority, to remove from office any of the officers provided for in this chapter; but in case of the removal of any officer by either house, his place shall be supplied by an election, *viva voce*; and in all elections under the provisions of this chapter for officers of either house of the legislative assembly, it shall require a majority of all the votes cast to determine a choice. [C. L. 17.]

ARTICLE 2. SUBORDINATE OFFICERS.

17. Assistant clerks etc.—compensation. There shall be elected one assistant clerk for each branch of the legislative assembly, who shall each receive the sum of six dollars per day for services during the sessions thereof; to be audited and paid out of the state treasury upon an account certified by respective presiding officers of the two houses of said assembly. [C. L. 18.]

18. Assistant enrolling and engrossing clerks — additional assistants. The president of the council and speaker of the house of representatives are authorized to appoint when necessary an assistant enrolling and engrossing clerk, and an additional assistant clerk of the council and house of representatives, respectively. Each of said clerks shall receive for their services the sum of five dollars per day for the time actually and necessarily employed in the discharge of their duties, to be audited and paid out of the state treasury on the certificate to and allowance of their account of services by the said president and speaker of their account of services by the said president and speaker respectively. [C. L. 19.]

19. Additional engrossing and enrolling clerks. The president of the council and the speaker of the house are hereby authorized to employ such additional engrossing and enrolling clerks for both branches of the legislature as are in their judgment deemed necessary for a proper fulfillment of the duties required of the committees of each house, and there is hereby appropriated out of any funds in the treasury a sum of money sufficient to cover the expenses of such additional services. [C. L. 20.]

20. Assistant sergeant-at-arms and postmaster. There shall be appointed by the president of the council and the speaker of the house one assistant sergeant-at-arms, and the president of the council shall appoint a postmaster to discharge the duties pertaining to that office for both council and house, the duties of which postmaster shall be prescribed by the president of the council. The assistant sergeant-at-arms shall discharge the several duties of the sergeant-at-arms in case of his absence or inability to serve, and shall, alternately with the watchman, serve as night watchman of the halls of the council and house of representatives. [C. L. 21.]

21. Pages. There shall be appointed by the president of the council one, and by the speaker of the house of representatives two pages, who shall each receive the sum of one dollar per day for such services, to be audited and paid out of the state treasury on accounts certified by the presiding officers of the respective houses. [C. L. 22.]

22. Stenographers. The president of the council and speaker of the house of representatives of the state of South Dakota are authorized and it is hereby made their duty to appoint a competent and skilled stenographer for their respective houses. Such stenographers shall be under the direction and control of the president and speaker respectively for the service of the various committees of the respective houses. Each of said stenographers shall receive six dollars per day for the time actually employed by them in the performance of their duties, which services shall be audited and paid out of the state treasury on the certificate of the president of the council and speaker of the house of representatives that said services were actually performed and that the bill for such services is correct and just. [C. L. 23.]

23. Clerks of judiciary committees — compensation. There shall be elected and employed by the house of representatives and council, each, one clerk whose duty it shall be to act as clerk of the judiciary committee of the house of representatives and council when said committees are in session; and it shall be the duty of such clerks when said committees are not sitting, to act as assistant engrossing and enrolling clerk of their respective houses. The *per diem* of such clerks shall be four dollars each, to be audited and paid out of the state treasury, upon an account certified by the respective presiding officers of each house of the legislative assembly, and a sufficient sum to pay said certificates is hereby appropriated out of the state funds not otherwise appropriated. [C. L. 24.]

24. Subordinate officers, how appointed — compensation. It shall be lawful for the president of the council and speaker of the house of

representatives of the state of South Dakota and they are hereby authorized, to appoint, from time to time, such clerks for committees, stenographers, postmasters, and other subordinate officers and employes, for their respective bodies, in addition to those already provided for by law, as may, from time to time, be declared necessary and provided for by resolution of their respective houses, or by joint resolution of such assembly. The salary of such clerks, subordinate officers, and employes, shall be fixed and provided for by the resolution declaring their appointment necessary. There is hereby appropriated out of the state treasury, a sum sufficient to pay for services of persons so employed. The respective amounts due each clerk, officer or employe, so employed and appointed, shall be audited and paid out of the state treasury, upon an account certified by the presiding officers of the two houses, respectively, and attested by the chief clerk thereof. [C. L. 25.]

25. In effect — when. [Ch. 3, '89.] § 1. That all laws hereafter enacted by the legislative assembly of South Dakota unless otherwise expressly provided therein shall be in force and take effect on the first day of July after their passage and approval.

LEGISLATIVE APPORTIONMENT.

26. Number of members. [Ch. 9, '97.] § 1. The state shall be divided into senatorial and representative districts, which districts shall be entitled to the number or numbers of senators and representatives as hereinafter provided, and consisting of forty-four senators and eighty-eight representatives.

27. Senatorial districts — number apportioned to each district. [Ch. 9, '97.] § 2. District No. 1 shall consist of the county of Union and be entitled to one senator.

District No. 2 shall consist of the county of Clay and be entitled to one senator.

District No. 3 shall consist of the county of Yankton and be entitled to one senator.

District No. 4 shall consist of the county of Bon Homme and be entitled to one senator.

District No. 5 shall consist of the county of Lincoln and be entitled to one senator.

District No. 6 shall consist of the county of Turner and be entitled to one senator.

District No. 7 shall consist of the county of Hutchinson and be entitled to one senator.

District No. 8 shall consist of the counties of Charles Mix and Douglas and be entitled to one senator.

District No. 9 shall consist of the county of Minnehaha and be entitled to two senators.

District No. 10 shall consist of the county of McCook and be entitled to one senator.

District No. 11 shall consist of the county of Hanson and be entitled to one senator.

District No. 12 shall consist of the county of Davison and be entitled to one senator.

District No. 13 shall consist of the county of Aurora and be entitled to one senator.

District No. 14 shall consist of the county of Brule and be entitled to one senator.

District No. 15 shall consist of the county of Moody and be entitled to one senator.

District No. 16 shall consist of the county of Lake and be entitled to one senator.

District No. 17 shall consist of the county of Miner and be entitled to one senator.

District No. 18 shall consist of the county of Sanborn and be entitled to one senator.

District No. 19 shall consist of the counties of Jerauld and Buffalo and be entitled to one senator.

District No. 20 shall consist of the county of Brookings and be entitled to one senator.

District No. 21 shall consist of the county Kingsbury and be entitled to one senator.

District No. 22 shall consist of the county of Beadle and be entitled to one senator.

District No. 23 shall consist of the county of Hand and be entitled to one senator.

District No. 24 shall consist of the counties of Hughes, Sully and Hyde and be entitled to one senator.

District No. 25 shall consist of the counties of Stanley, Lyman, Pre sho, Sterling, Nowlin, Jackson and Pratt and be entitled to one senator.

District No. 26 shall consist of the county of Deuel and be entitled to one senator.

District No. 27 shall consist of the county of Hamlin and be entitled to one senator.

District No. 28 shall consist of the county of Codington and be entitled to one senator.

District No. 29 shall consist of the county of Clark and be entitled to one senator.

District No. 30 shall consist of the county of Spink and be entitled to one senator.

District No. 31 shall consist of the county of Grant and be entitled to one senator.

District No. 32 shall consist of the counties of Day and Marshall and be entitled to two senators.

District No. 33 shall consist of the county of Brown and be entitled to two senators.

District No. 34 shall consist of the county of Roberts and be entitled to one senator.

District No. 35 shall consist of the counties of Faulk and Potter and be entitled to one senator.

District No. 36 shall consist of the counties of Edmunds and Walworth and be entitled to one senator.

District No. 37 shall consist of the counties of McPherson and Campbell and be entitled to one senator.

District No. 38 shall consist of the county of Lawrence and be entitled to two senators.

District No. 39 shall consist of the county of Pennington and be entitled to one senator.

District No. 40 shall consist of the counties of Meade and Butte and be entitled to one senator.

District No. 41 shall consist of the counties of Custer and Fall River and be entitled to one senator.

REPRESENTATIVE DISTRICTS.

28. Representative districts — number apportioned to each district. [Ch. 9, '97.] § 3. District No. 1 shall consist of the county of Union and be entitled to three representatives.

District No. 2 shall consist of the county of Clay and be entitled to two representatives.

District No. 3 shall consist of the county of Yankton and be entitled to three representatives.

District No. 4 shall consist of the county of Lincoln and be entitled to three representatives.

District No. 5 shall consist of the county of Turner and be entitled to three representatives.

District No. 6 shall consist of the county of Hutchinson and be entitled to three representatives.

District No. 7 shall consist of the county of Bon Homme and be entitled to two representatives.

District No. 8 shall consist of the county of Douglas and be entitled to one representative.

District No. 9 shall consist of the county of Charles Mix and be entitled to one representative.

District No. 10 shall consist of the county of Minnehaha and be entitled to five representatives.

District No. 11 shall consist of the county of McCook and be entitled to two representatives.

District No. 12 shall consist of the county of Hanson and be entitled to one representative.

District No. 13 shall consist of the county of Davison and be entitled to one representative.

District No. 14 shall consist of the county of Sanborn and be entitled to one representative.

District No. 15 shall consist of the county of Aurora and be entitled to one representative.

District No. 16 shall consist of the counties of Jerauld and Buffalo and be entitled to one representative.

District No. 17 shall consist of the county of Brule and be entitled to two representatives.

District No. 18 shall consist of the county of Miner and be entitled to one representative.

District No. 19 shall consist of the county of Lake and be entitled to two representatives.

District No. 20 shall consist of the county of Moody and be entitled to two representatives.

District No. 21 shall consist of the county of Brookings and be entitled to three representatives.

District No. 22 shall consist of the county of Kingsbury and be entitled to five representatives.

District No. 23 shall consist of the county of Beadle and be entitled to two representatives.

District No. 24 shall consist of the county of Hand and be entitled to one representative.

District No. 25 shall consist of the counties of Hyde, Hughes and Sully and be entitled to two representatives.

District No. 26 shall consist of the counties of Lyman, Presho, Sterling, Nowlin, Jackson, Pratt and Stanley and be entitled to one representative.

District No. 27 shall consist of the county of Clark and be entitled to two representatives.

District No. 28 shall consist of the county of Codington and be entitled to two representatives.

District No. 29 shall consist of the county of Hamlin and be entitled to one representative.

District No. 30 shall consist of the county of Deuel and be entitled to one representative.

District No. 31 shall consist of the county of Grant and be entitled to two representatives.

District No. 32 shall consist of the county of Marshall and be entitled to one representative.

District No. 33 shall consist of the county of Roberts and be entitled to two representatives.

District No. 34 shall consist of the county of Day and be entitled to three representatives.

District No. 35 shall consist of the county of Brown and be entitled to four representatives.

District No. 36 shall consist of the county of Spink and be entitled to two representatives.

District No. 37 shall consist of the county of Edmunds and be entitled to one representative.

District No. 38 shall consist of the county of McPherson and be entitled to one representative.

District No. 39 shall consist of the county of Walworth and be entitled to one representative.

District No. 40 shall consist of the county of Campbell and be entitled to one representative.

District No. 41 shall consist of the county of Potter and be entitled to one representative.

District No. 42 shall consist of the county of Faulk and be entitled to one representative.

District No. 43 shall consist of the county of Custer and be entitled to one representative.

District No. 44 shall consist of the county of Fall River and be entitled to one representative.

District No. 45 shall consist of the county of Pennington and be entitled to two representatives.

District No. 46 shall consist of the county of Meade and be entitled to one representative.

District No. 47 shall consist of the county of Butte and be entitled to one representative.

District No. 48 shall consist of the county of Lawrence and be entitled to four representatives.

29. Gregory county attached. [Ch. 9, '97.] § 4. When the unorganized county of Gregory shall be organized it shall be attached to the county of Charles Mix for legislative purposes.

CHAPTER 2. THE STATUTES.

30. Secretary of state to have laws printed. The secretary of the state shall procure the printing of one thousand copies of the general laws, and five hundred of the memorials, private laws and resolutions, passed at each session of the legislative assembly, and have the same separately bound, as follows: Of the general laws, five hundred copies in law sheep; two hundred and fifty copies in half binding, with leather backs and corners; and the remaining two hundred and fifty copies, and the memorials, private laws and resolutions, in durable pamphlet form; and they shall all be prefaced by a table of contents, and shall contain a full and correct index. [C. L. 50.]

31. Secretary of state to arrange and correct laws. In arranging the laws, memorials, and resolutions for publication, the secretary aforesaid is hereby authorized to make such corrections in the orthography, grammatical construction and punctuation of the same, as in his judgment shall be deemed essential; *provided*, that when any words or clauses shall be inserted, the same shall be inclosed in brackets. [C. L. 51.]

32. Laws, how distributed. The secretary aforesaid is hereby authorized to distribute the laws, after they shall have been printed and bound, in the manner hereinafter specified. [C. L. 52.]

33. Laws, how distributed and to whom. The following named officers of this state and of the counties therein, and none other, shall be entitled to receive without cost, one copy each of the printed volumes of the codes and session laws of South Dakota, published or purchased by the legislative assembly of this state for distribution under the provisions of this act, to wit: The chief justice of the supreme court of South Dakota, each associate justice of said court, each clerk of the circuit court, the United States attorney for South Dakota, the United States marshal for South Dakota, the governor of the state, the secretary of state, the auditor, the treasurer, the superintendent of public instruction, each state's attorney, each county judge, each sheriff, each register of deeds, each county clerk or county auditor, each county treasurer, each county justice of the peace, each coroner, each county superintendent of public schools, each county assessor, chairman of the board of county commissioners, each library association or historical society organized for the benefit of the public in any county or town of this state. And to each member of the legislative assembly a copy of the laws enacted by the assembly of which he was a member. [C. L. 53.]

34. Laws — what United States officers to receive. It is hereby made the duty of the secretary of state, whenever any volumes of the laws of this state shall come into his hands, to transmit to each federal and state officer and United States commissioner, clerks of the United States district and supreme court, and each state's attorney, one volume of such laws, prepaying the postage thereon if sent by mail; and the said secretary shall state an account of his disbursements for postage or carriage of such volumes so sent by him, to the auditor of the state, who is hereby authorized to audit the same, if in his judgment it be just and correct; and when so audited, the treasurer of the state is authorized to pay the same out of any moneys in his hands not otherwise appropriated. [C. L. 54.]

35. County officers, how supplied. The county clerks of the several counties of this state, shall, on the first Monday of February next succeeding the time when any session of the legislative assembly shall be held, make a requisition upon the secretary of state for as many copies of the laws of said session as may be required to supply one copy to each county, district or township office entitled to the same, and shall forward said requisition to said secretary, who shall thereupon, or as soon thereafter as he shall receive the said volumes of laws, forward the number of copies called for by said requisition, to said clerk, either by express, or in any other secure manner, the charges of said carriage to be borne by the county receiving such laws. The county clerk, upon receiving the laws, shall distribute them to the several officers entitled by law to the same, taking, in every instance, the official receipt of the officer to whom they are delivered, said receipt to describe the date of the volumes so delivered, and to be thereafter filed in the office of said county clerk. [C. L. 55.]

36. Officers to hand laws to successors. Whenever any person shall be elected to fill any of the county, town or district offices mentioned in section 33, it shall be such person's duty, before taking possession of the said office, to procure from the county clerk of their county a copy of the receipt filed with said clerk by the outgoing officer for any volumes of the laws of this state; which copy of said receipt the person so elected shall exhibit to his predecessor in office, at the time when he shall assume the duties of his office, and shall require from his predecessor all the volumes of laws which he may have received, as shown by the receipt on file with the county clerk; and it shall be the duty of the said officer, after having received from his predecessor the volumes of laws, as heretofore specified, to make out duplicate receipts of the same, one of said receipts to be given to his predecessor in office,

and the other to be forthwith transmitted to the county clerk of the county, who is hereby required to file the same in his office. [C. L. 56.]

37. Penalty for non-delivery of laws or statutes to successor. In case any person holding an office in this state, or in any county, township or district thereof, shall, upon relinquishing said office to his successor, fail or refuse to deliver over to his successor in office all the volumes of laws that have come into his possession by virtue of holding such office, such person so failing or refusing shall be liable, upon conviction, to a fine of fifty dollars, or to imprisonment in the county jail not exceeding twenty days; and it is hereby made the duty of the person succeeding to the office of such delinquent to file complaint against him before a justice of the peace; *provided*, that in case the person so failing or refusing to deliver said volumes of laws can show to the satisfaction of the justice that said volumes have been destroyed or stolen in a manner for which the said delinquent person should not be held responsible, then and in that case no penalty shall be imposed. [C. L. 57.]

38. How lost volumes of laws or statutes replaced. Whenever any county, township, or precinct officer entitled to a copy of the laws of this state, shall, through the neglect or refusal of his predecessor in office to turn such laws over to him, or through loss occasioned by fire, theft or other cause for which said person cannot be held responsible, be without such laws, such person is hereby authorized to make a written requisition upon the county clerk of his county for such volumes of laws as may be required, and the said clerk is authorized to proceed in the manner hereinbefore provided for the general distribution to supply the said requisition; *provided*, that the secretary shall be authorized to charge the county from which such requisition is made, the cost, with ten per cent. added, for each and every additional volume so furnished; which said amount shall be allowed by the board of commissioners of said county, and paid over to the secretary in cash, who shall in turn pay the same to the state treasurer, taking his official receipt therefor. [C. L. 58.]

39. Secretary to sell laws and statutes — cost. The secretary of the state shall sell to any party applying therefor, the volumes of laws of this state, for the cost and ten per cent. added per volume, and pay over to the state treasurer all sums so received, taking the official receipt of said treasurer therefor. [C. L. 59.]

40. Ten copies set aside for state library. Ten volumes of the laws of South Dakota passed by each legislative assembly shall be placed in the state library by the secretary of the state, and shall be kept therein

for the use of any person visiting said library; but shall not be loaned or otherwise disposed of. [C. L. 60.]

41. Conflicts adjusted. If the provisions of any code, title, chapter or article conflict with or contravene the provisions of any other code, title, chapter or article, the provisions of each code, title, chapter or article must prevail as to all matters and questions arising thereunder out of the same subject matter. [C. L. 61.]

42. Secretary may renumber sections, etc. In the publication of the codes and general statutes, the secretary of the state has power, without altering the general plan, to renumber and readjust sections, chapters, articles and subdivisions, and also to place and distribute general statutes not now embraced in the codes in the same, under the appropriate chapter or other heading. [C. L. 62.]

42a. Compiled laws authenticated. [Ch. 36, '89.] The compiled laws of 1887, prepared and published under and by virtue of chapter 83, laws of 1887, be and the same are hereby declared admissible in all courts of this state as legal evidence of the statutes therein contained: provided, that this declaration shall not preclude reference to the revised codes of 1887, or to the session laws of 1879, 1881, 1883, 1885 or 1887, nor prevent their control in case of any discrepancy between said codes or session laws and said compiled laws.

42b. Grantham's statutes authenticated. [Ch. 133, '99.] § 1. That the "Statutes of the State of South Dakota," edited and compiled by Edwin L. Grantham, and published by E. B. Myers & Company of Chicago, Illinois, and all revisions thereof, are hereby declared to be admissible in all courts of this state, as legal evidence of the statutes therein contained. Provided, that this declaration shall not preclude reference to the revised codes of 1877, the compiled laws of 1887 or to any of the acts of the legislative assembly of the territory of Da-

kota, or to the session laws of the state of South Dakota; nor prevent their control in case of any discrepancy between said statutes of South Dakota and such codes and session laws.

CHAPTER 3. STATE LIBRARY.

43. Secretary of state, custodian of. The state library, including statutes, reports, documents and miscellaneous books of every nature and description belonging to said library, is hereby placed in the care and custody of the secretary of the state, whose duty it shall be to provide a room for said library, and keep the same open at all reasonable hours for the benefit of the public; to label and arrange the books in a convenient manner; to collect in all books now out, and to let no book go out without first taking the receipt of the person to whom such book is delivered. [C. L. 63.]

44. Appropriation to pay rent. There is hereby appropriated the sum of two hundred dollars, annually, commencing with the first day of July, 1878, out of any moneys in the state treasury, not otherwise appropriated, to pay for rent of rooms for the state library. [C. L. 64.]

45. Appropriation for care of library. The sum of two hundred and fifty dollars, annually, is hereby appropriated out of any money in the state treasury, not otherwise appropriated, as compensation to the custodian of said library for care and custody of the same. [C. L. 65.]

46. Auditor to audit accounts, etc. It shall be the duty of the state auditor to audit all accounts presented to him by the secretary of state, when properly verified, and draw his warrants on the state treasurer for the same, for all money paid out by the secretary as express charges or freight on books donated and sent to the state library from abroad. [C. L. 66.]

CHAPTER 5. EXECUTIVE.

ARTICLE 1. STATE AUDITOR.

47. All accounts and claims to be audited. All accounts and claims against the state, which shall be by law directed to be paid out of the treasury thereof, shall be presented to the auditor, who shall examine and adjust the same, and, for the sums which shall be found due from the state, shall issue warrants, payable at the state treasury, which shall be numbered consecutively, and each shall specify the date of its issue and the name of the person to whom payable; and the number, date of issue and name of the person to whom payable of each warrant, and corresponding thereto shall be entered upon a stub for each warrant separately, and these stubs shall be carefully preserved by the auditor in his office. [C. L. 69.]

47a. Providing for verification and receipt to be presented to state auditor before issuance of any warrant. [Ch. 135, '99.] § 1. No warrant shall be issued by the state auditor for the payment of any expense or expenses paid out by any officer or employe of the state of South Dakota, or of any office, officer or department thereof, until such officer or employe shall present to the state auditor an itemized statement and account of such expenses, duly verified under oath, to the effect that the amount or amounts so itemized have been by such officer or employe actually paid out and expended by him in lawful money of the United States, which statement and verification shall be filed in the office of the state auditor, together with a receipt or receipts to such officer or employe from the person or persons to whom such payment shall have been made, which said receipt or receipts shall be presented to and filed with the state auditor before the issuance of any warrant.

48. Fractional warrants authorized. When the amount due from the state to any one person is ascertained and adjusted, the auditor, if requested, shall divide the sum into amounts of from one to twenty dol-

lars, to suit the convenience of the person entitled thereto, and shall issue warrants for the several amounts separately, into which the sum shall be so divided, and equal to the whole amount thereof; and any warrant already issued that may be returned by the holder thereof to the auditor, he may cancel and issue in lieu thereof small warrants, as herein provided, equal in the aggregate to the face value of the warrants canceled. [C. L. 70.]

49. Credit of state pledged. For the redemption of all warrants issued in conformity with the provisions of this chapter, the credit of the state is hereby pledged. [C. L. 71.]

50. Warrants, how numbered. The auditor shall enter, in progressive order, in a book or books to be provided by him for that purpose, the number of each warrant by him issued, the amount thereof, the date of its issue and the name of the person to whom issued, and the fund on which said warrant is drawn. [C. L. 72.]

51. How auditor to keep accounts. The auditor shall make and keep in his office, in suitable books, to be procured at the expense of the state, fair and accurate accounts showing the debits and credits of each separate fund or appropriation by giving such funds credit for the full amount appropriated by law, and by charging to such funds severally the amounts drawn against them from time to time, and he shall also keep records of all such public accounts and other documents as have been or may be by law made returnable to his office, and shall keep a file in progressive order of all receipts and warrants returned as redeemed from the state treasurer, and other vouchers relative to the business of his office. [C. L. 73.]

52. Biennial report of auditor. The auditor shall submit a biennial report to the governor of the state on or before the fifteenth day of December preceding each regular session of the legislative assembly, which report shall show for the preceding fiscal term ending on the thirtieth day of June:

1. A statement of date, number and amount of each warrant; the person in whose favor, and on what fund each warrant was drawn.

2. The total amount of warrants redeemed and returned to him by the state treasurer.

3. A statement of the accounts of the several funds and appropriations, which shall show the sums appropriated for each fund, the amount of warrants on each fund, and the unexpended balances of the same.

4. Such remarks on the finances of the state as he shall deem proper, which report shall be transmitted by the governor to the legislative assembly. [C. L. 74.]

53. Accounts for maintenance. [Ch. 102, '89.] § 1. That the state auditor be and he is hereby authorized and empowered to hear and determine any accounts or claims for services or supplies furnished prior to the next session of the legislative assembly, for heating and lighting the public offices of the state, for care of the same and for expenses necessary to their maintenance, and for necessary repairs upon the capitol building. And he is also empowered to draw his warrants for such sums as he shall deem to be due on such accounts or claims, not exceeding in the aggregate five thousand dollars in any one year. And the state treasurer is hereby directed to pay such warrants from the general fund of the state.

54. Auditor to transmit to treasurer statement of assessments. The auditor shall transmit to the state treasurer a statement of the assessments of each county of the state as soon as practicable after the abstracts of such assessments shall be received from the county clerks of the several counties. [C. L. 75.]

55. Legislative inspection of books. Whenever required he shall submit his books, accounts, and vouchers to the inspection of the legislative assembly, or any committee thereof appointed for that purpose. [C. L. 76.]

56. List of lands becoming taxable. He shall transmit to the register of deeds of each county, on or before the first day of May in each year, a list of lands within such county which shall have become subject to taxation within the preceding year, agreeable to the information by him received from the land offices in the state. [C. L. 77.]

57. Must transmit forms and instructions to county clerks. He shall from time to time prepare and transmit to the county clerk of each county such general forms and instructions in conformity with the laws in force, as, in his opinion, may be necessary to secure uniformity in assessing, charging, and collecting and accounting for the public revenue; and assessors and treasurers shall observe such forms and instructions. [C. L. 78.]

58. May remit tax penalties. The auditor is hereby authorized to remit any penalty for the non-payment of taxes when satisfied that the same is improperly charged, or that such penalty occurred in consequence of the negligence or error of any officer required to do any duty relative to the levy and collection of such taxes; and may, from time to time, correct all errors which he shall discover in the duplicate of taxes assessed in any county. [C. L. 79.]

59. What expenses to be paid from contingent fund. The expenses of procuring books directed by this act to be procured, and the copies of entries, surveys, and other documents from the land offices, and all other contingent expenses of his office, shall be paid by the auditor out of the contingent fund appropriated for the use of said office. [C. L. 80.]

60. Proceedings on default of officer to turn over revenue. If any officer concerned in the collection of the state revenue shall fail to collect, to make proper return, to make settlement, or to pay over all moneys by him received and belonging to the state at the time and in the manner required by law, the auditor of the state shall, after the expiration of fifteen days next after the expiration of the time within which such are by law required to be performed, transmit to the county clerk of the proper county a statement of the sum claimed by the state from such delinquent officer, with directions for such county clerk to proceed against such delinquent officer and his securities in the manner prescribed by law; *provided*, that when the auditor of the state shall be satisfied that such default results from some inevitable accident, and not from the negligence of such officer, he may, at his discretion, postpone the instructions for bringing suit for any time not exceeding sixty days. [C. L. 81.]

61. Auditor may administer certain oaths. The auditor is authorized to administer an oath to accountants and witnesses, in support of the

justice of such accounts as may be exhibited to him for liquidation, and to certify the same accordingly. [C. L. 82.]

62. Clerical expenses of executive office. The state auditor is authorized to furnish such clerical assistance as may be necessary to the executive office, the same to be paid out of the receipts of said auditor's office, not to exceed one thousand dollars in any one year. [C. L. 83.]

ARTICLE 2. STATE TREASURER.

63. Charge and payment of public funds. He shall have charge of and safely keep all public moneys which shall be paid into the state treasury, and pay out the same as directed by law, and perform all such other duties as now are, or may hereafter be required of him by law. [C. L. 85.]

64. Keep account of receipts and payments. He shall keep an accurate account of the receipts and disbursements of the treasury, in books provided for that purpose at the expense of the state, in which he shall specify the names of persons from whom received, to whom paid, on what account the same is received or paid out, and the time of such receipt or payment. [C. L. 86.]

65. Keep account with each county. He shall also keep an account with each organized county of the state, in which each county shall be charged with the amount of the tax levied, according to the statements of assessment and levy transmitted to him by the state auditor, and credited by the amounts received from the county treasurer of such counties. [C. L. 87.]

66. Warrants receivable for public dues. He shall receive in payment for public dues the warrants drawn by the auditor of the state, in conformity with law, or redeem the same, if there be money in the treasury appropriated for that purpose, and on redeeming such warrant, or receiving the same in payment, he shall cause the person presenting such warrant to indorse the same; and the treasurer shall write on the face of the same "redeemed," and shall enter in his book, in separate columns, the number of such warrant, its date, amount, and the name of the person to whom payable, the date of payment, and the amount of interest, if any, paid thereon. [C. L. 88.]

67. Indorsement of warrants unpaid. When any warrant shall be presented to the treasurer for redemption, and there shall be no funds in the treasury appropriated for that purpose, the treasurer of the state shall indorse thereon the date of its presentation, with his signature thereto, and whenever there shall be funds in the treasury for the re-

demption of warrants so presented and indorsed, the treasurer shall give notice of the fact in some newspaper published at the seat of government, and at the expiration of thirty days after the date of such notice the interest on such warrant shall cease. [C. L. 89.]

68. Redeemed warrants deposited with auditor. He shall, on the last day of March, June, September, and November, deposit in the office of the auditor of the state, all warrants by him redeemed or received in payment at the treasury, and take the auditor's receipt therefor. [C. L. 90.]

69. Biennial report to governor. He shall submit to the governor, on or before the fifteenth day of December preceding each regular session of the legislative assembly, a report containing a full and true exhibit of the state of the public accounts and funds, the amount by him received, the amount paid out during the preceding fiscal term ending on the thirtieth day of June, and the balance remaining in the treasury, together with an exhibit of the several organized counties as provided in section 66, which report shall by the governor be transmitted to the legislative assembly. [C. L. 91.]

70. Legislative inspection of accounts. He shall, as often as required, submit his books, accounts, vouchers, and the funds in the treasury, to the inspection of either branch of the legislative assembly, or any committee thereof appointed for that purpose. [C. L. 92.]

71. Forbidden to purchase warrants or accounts. He shall, in no case, purchase or receive any warrant redeemable at the treasury, or any audited account, at a less value than is expressed therein; nor shall he receive any fee or reward, aside from his annual salary, for transacting any business connected with the duties of his office. [C. L. 93.]

72. Responsibility for delinquencies. If, in any instance, the treasurer shall neglect to call to account any delinquents, whereby the public revenue may suffer loss, he shall be held and deemed accountable for the sums due by such delinquents, to all intents and purposes, the same as if the funds had actually been paid into his office. [C. L. 94.]

73. Bonds to be registered, etc. [Ch. 20, '91.] § 1. The state treasurer shall immediately procure a bond register and register all outstanding bonds of the state of South Dakota, or which this state assumed and agreed to pay as hereinafter provided, and hereafter all bonds issued by the state shall by the treasurer be registered in such bond register, stating the number of such bond, its date of maturity, amount, rate of interest, to whom and where payable.

ARTICLE 3. ATTORNEY GENERAL.

74. Office created — duties of. There shall be in and for the state of South Dakota an attorney general who shall hold his office two years and until his successor is appointed and qualified. He shall be a member of the state board of equalization. He shall appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in the supreme court in which the state shall be interested as a party, and shall also, when requested by the governor, or either branch of the legislature, appear for the state and prosecute or defend in any other court or before any officer in any cause or matter, civil or criminal, in which the state may be a party or interested, and shall attend to all civil cases remanded by the supreme court to any circuit court in which the state is a party or interested. [C. L. 95.]

75. To prosecute official bonds, etc. It shall be the duty of the attorney general at the request of the governor, auditor or treasurer to prosecute any official bond or any contract in which the state is interested upon a breach thereof, and to prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with either of their departments. [C. L. 96.]

Action begun by the attorney general on the bond of a county treasurer for taxes collected by him, will be presumed to have been brought under proper authority. *State v. Webbes*, S. D. ; 75 N. W. Rep. 820.

76. To advise district attorneys, etc. The attorney general shall consult with and advise the state's attorneys, when requested by them, in all matters pertaining to the duties of their office. He shall also when requested give his opinion in writing without fee, upon all questions of law submitted to him by the legislature, or either branch thereof, or by the governor, auditor, treasurer or superintendent of public instruction. [C. L. 97.]

77. Shall prepare drafts for state officers, etc. Whenever requested by the state auditor, treasurer or superintendent of public instruction, he shall prepare proper drafts for contracts, forms and other writings, which may be wanted for the use of the state; and he shall report to the legislature, or either branch thereof, whenever requested, upon any business relating to the duties of his office. [C. L. 98.]

78. Shall pay moneys to state treasurer. All moneys received by the attorney general belonging to the state shall, immediately upon the receipt thereof, be paid by him into the state treasury. [C. L. 99.]

79. To keep certain books. The attorney general shall keep in proper books, to be provided for that purpose, at the expense of the state, a register of all actions and demands prosecuted or defended by him in

behalf of the state, and of all proceedings had in relation thereto, and shall deliver the same to his successor in office. [C. L. 100.]

80. Oath and bond required. Before the attorney general enters upon the duties of his office he shall take and subscribe the oath required by law, and shall execute to the state a bond, with not less than three sureties, in the sum of three thousand dollars, to be approved by the governor, conditioned for the faithful performance of his duties as attorney general and also as member of the state board of equalization, which bond and oath shall be filed in the office of the executive, and such bond shall be renewed in larger amounts whenever requested by the legislature. [C. L. 101.]

81. Salary of — mileage. The attorney general shall receive a salary of one thousand dollars per annum, to be paid in quarterly payments, which shall be in full for all his services both as attorney general and as a member of the state board of equalization, and there is hereby appropriated out of any money in the treasury not otherwise appropriated, a sum of money sufficient to pay such salary and expenses; *provided*, that no warrant upon the treasurer for such expenses be drawn by the auditor until an itemized statement of such expenses, verified by oath, shall be filed with the auditor. [C. L. 102.]

[Ch. 19, '90.] That the attorney general shall receive five cents per mile and all other necessary traveling expenses incurred while journeying in the performance of the duties of his office, to be paid on an itemized statement verified by oath. (In force March 7, 1890.)

82. May appoint assistant — powers of same. [Ch. 17, '89.] § 1. That the attorney general may appoint an assistant attorney general — whose appointment shall be in writing and filed in the office of the governor. That such assistant attorney general shall have the same powers and authority as the attorney general.

83. Oath of assistant attorney general — salary. [Ch. 17, '89.] § 2. That the assistant attorney-general shall, before entering upon the duties of his office, take and subscribe upon his appointment an oath that he will support the constitution of the United States and the constitution of the state of South Dakota, and that he will faithfully and impartially to the best of his ability, and knowledge perform all the duties of the office of the attorney general, as provided by the conditions of the bond of the attorney general. That the assistant attorney general shall be paid by the attorney general out of his salary, and receive no other compensation whatever.

ARTICLE 4. SECRETARY OF STATE.

84. Secretary of state shall be custodian. [Ch. 105, '91.] § 1. That the secretary of state is charged with the custody:

First. Of all acts and resolutions passed by the legislature.

Second. Of the journals of the legislature.

Third. Of the great seal of the state.

Fourth. Of all books, records, deeds, parchments, maps and papers required to be kept on deposit in his office pursuant to law.

Fifth. Of the enrolled copy of the constitution.

Sixth. He is the superintendent and shall have charge of the state capitol grounds and buildings, together with such property therein as is not specially intrusted to other officers by law, and shall keep the same in good order and repair, and shall adopt such measures as he may deem necessary to protect the same from injury or deterioration.

Seventh. He shall provide fuel and light for all state officers having their offices or chambers at the state capitol, and shall also provide records, blanks, stationery and other necessary supplies and furniture for the use of the senate and the house of representatives when in session.

Eighth. He is ex-officio state librarian, and as such is charged with the care and custody of all books, papers, documents and records belonging to the state library, and shall keep and preserve the same in such manner as by law provided.

85. Powers and duties of secretary of state. [Ch. 105, '91.] § 2. It is the duty of the secretary of state:

(A) To keep a register of such official acts of the governor, to which attestation over his signature and the great seal is required.

(B) To affix the great seal, with his attestation, to all commissions, pardons and other public instruments to which the signature of the governor is required, and also in attesting and authenticating all certificates, charters and any and all other documents properly issued by the said secretary.

(C) To record in proper books all conveyances made to the state, all appointments and commissions made by the governor, all articles of incorporation and amendments thereof, letters patent, deeds, certified copies of franchises, or other papers, and all official bonds filed in his office, except bonds of notaries public.

(D) To receive, file and keep on file any document, official oath, official bond, articles of incorporation and amendment thereof, and letters of acceptance which the law requires to be filed in his office.

(E) To furnish on demand to any person, company or corporation having paid the lawful fees therefor, a certified copy, or copies of all,

or any part of, any law, record or other instrument kept on file in his office.

(F) To employ a competent person as janitor, whose duty it shall be to attend to the heating, lighting and cleaning of the state house and of the several offices therein, under such rules and regulations as the secretary of state may prescribe, and who shall be paid such compensation for his services as the legislature may appropriate for such purpose. In case of actual necessity the secretary may, temporarily, employ such assistance to the janitor as may be needed.

(G) To immediately, previous to any regular session of the legislature, cause the legislative halls to be suitably prepared for such purpose; to prepare from the proper election returns filed in his office a roll of all senators elect, and shall deliver the same to the president of the senate at least thirty minutes before the time fixed by law for the opening of the session; to prepare from said election returns a roll of all the members elected to the house of representatives, and shall at the time fixed by law call the said members enrolled to order and shall preside until a speaker is elected.

(H) To have sole and exclusive control of the funds appropriated for the maintenance of the state house, and shall draw on the same only for the purpose of keeping the capitol grounds and buildings in good order, cleanliness and repair, and for the purpose of providing the offices mentioned in subdivision 7 of section 1 of this act with fuel, light and other like necessaries, and the state auditor shall draw his warrants upon the state treasurer in the amounts specified in the bills against said fund whenever such bills, properly indorsed by the said secretary shall be presented to him, and the said auditor shall draw warrants against said fund in no other manner. The secretary of state shall include an itemized account of the manner in which said funds were expended in his biennial report to the governor, which said report is hereinafter provided for.

(I) To present to the speaker of the house of representatives, and to the president of the senate at the beginning of each regular session, a full and itemized account of all expenses incurred by him on account of the state in furnishing records, blanks, stationery and other necessary supplies for the legislature as provided for in subdivision 7 of section 1 of this act, together with such suggestions as he may deem necessary and proper.

(J) To report biennially to the governor the business transactions of the different branches of his office during the preceding years, the fees collected and paid into the state treasury, the expense incurred, the deficiencies, if any, and such other matters as are usually included in similar reports to the governor.

(K) To keep a fee book in which shall be entered all fees collected by him, with the date, name of payor and the nature of the services in each case, which fees so collected by him, together with the proceeds of the sale of session laws, or other statutes, shall be paid into the state treasury quarterly, and report thereof made as provided by law.

86. Shall have general supervision of corporations. [Ch. 103, '95.] § 3. The secretary of state shall have a general supervision of the incorporation of all private corporations organized under the laws of this state, except insurance companies. Whenever articles of incorporation with application for a charter shall be presented to him, he shall carefully examine such articles, and if he is satisfied upon such examination that such articles are complete and that the corporation is being formed for lawful purposes, a charter shall be issued. But if he shall find that such articles of incorporation are incomplete in any material point, or that such corporation is being formed for unlawful purposes, or for the purpose of aiding in the formation of [an] unlawful combination or trust, he shall in such case return such articles to the incorporators with his reasons therefor, and shall withhold the charter until such articles shall have been made to comply with the law. He shall in like manner and with the same authority, examine the articles of incorporation of any foreign corporation except foreign insurance companies that may be filed in his office in pursuance of law, and if he shall find that such articles of incorporation contain no conflicting provision to the laws of this state, and that such company or corporation has appointed a resident agent or attorney, in compliance with law, he shall issue to such corporation a certificate of authority to transact its business in this state, for which services he shall collect the same fees as are provided for examination of articles of incorporation of domestic corporations and the issuance of a charter, and in no case shall a domestic or foreign corporation be allowed to transact any business in this state until such corporation shall have received a charter or certificate of authority as hereinbefore provided.

87. May sell laws. [Ch. 105, '91.] § 4. The secretary of state is hereby authorized to sell at a fair price, and in no case for less than fifteen per cent. above cost, any surplus of session laws, and of compiled or revised statutes of this state, and to turn the proceeds of such sales over to the state treasury as provided by law.

88. Shall have general supervision of printing session laws. [Ch. 105, '91.] § 5. As soon as practicable after adjournment of each regular session of the legislature, the secretary of state shall give notice by publication for a period of three weeks or more in three or more newspapers of general circulation in the state, or by letters, that sealed proposals will be

received at his office up to a certain day specified in said notice, for the printing and binding of the session laws, and such other printing and binding as the legislature may have ordered through his office. No proposal shall be considered by him unless it is accompanied by an acceptable bond, duly executed by such bidder to the state of South Dakota, with two or more sureties, who must justify in a penal sum of at least five thousand dollars, conditioned for the prompt and faithful performance of such contract as may be awarded to him. He shall also arrange in proper order all laws enacted by the legislature, and prepare copies thereof for the use of the printer, and shall have and exercise a general supervision of the work. He may also let by contract such other work for the state, and the furnishing of supplies when in his opinion the best interests of the state will be subserved thereby.

PUBLIC PRINTING.

89. Classification. [Ch. 99, '91.] § 1. The printing for the state of South Dakota is hereby divided into four classes as follows: First class. Printing and binding all bills for the two houses of the legislature and such resolutions, petitions and memorials as are required to be printed for the daily use of the legislative assembly. Second class. Printing and binding of the journals of the two houses of the legislature and such reports, communications and other documents as enter into and make up the journals. Third class. Printing and binding of reports of state officers, and other documents ordered by the legislature, together with the executive documents and legislative manual. Fourth class. Printing and binding general laws and joint resolutions, revised code and supreme court reports.

90. Compensation. [Ch. 99, '91.] § 2. That the compensation shall not exceed the following rates for public printing in the state of South Dakota, to wit: For composition sixty cents per one thousand ems of solid matter. For press work twenty-five cents per hundred impressions of eight pages each for book work, and fifteen cents per hundred impressions for job work. For binding in pamphlet form with printed cover fifteen cents per volume of one hundred pages or less; for each additional one hundred pages or less five cents per volume. For binding in full sheep per volume of one hundred pages or less seventy-five cents per volume; for each additional one hundred pages or less, fifteen cents per volume. For binding in paper sides with leather backs and corners fifty cents per volume of one hundred pages or less; for each additional one hundred pages or less fifteen cents per volume. For binding work of the first class fifty cents per hundred complete copies.

For book paper used in state printing twelve cents per pound. For flat paper used and required in the various classes not to exceed the wholesale price to dealers with twenty-five per cent. advance thereon.

91. Secretary of state ex-officio commissioner of public printing. [Ch. 99, '91.] § 3. The secretary of state shall be ex-officio commissioner of public printing, and he shall have general supervision of all state printing, measuring the work and adjusting all accounts with contractors in compliance with law and regulations adopted by him.

92. Commissioner of public printing. [Ch. 155, '95. Ch. 99, '91.] § 4. It is hereby made the duty of the commissioner of public printing to advertise for bids on or before July 1, of each year, in such papers as he may deem necessary, not exceeding four, for the execution of the several classes of state printing and binding, in separate contracts as specified in section 1 of this act, for the term of one year. He shall provide a schedule for the use of contractors, and adopt such rules and regulations as shall appear best for the state. He shall determine the kind of paper to be used, the size and style of type, the style of binding and the manner of adjusting all such accounts. He shall award separate contracts for each class of printing described herein, but such contracts shall not be awarded to contractors outside the state of South Dakota, unless the commissioner shall have reasonable grounds for believing that a combination at the time has been entered into between the proposed contractors within the state for maintaining exorbitant prices. Said commissioner may reject any and all bids and readvertise for proposals, but it is made his duty to accept the lowest responsible bid consistent with good work and subject to the rules and regulations prescribed. He shall also require a bond from each contractor in twice the amount for which the contract is awarded and shall approve all bills found to be correct and in accordance with law.

Contract for printing is assignable. *Carter v. State*, 8 S. D. 153; 65 N. W. Rep. 422.

Classes of printing cannot be divided and separate contracts awarded for each class. *Carter v. Ringsrud*, 3 S. D. 352; 53 N. W. Rep. 181.

Contract for printing let by secretary of state is not a violation or in conflict with section 9, article 11, Constitution, prohibiting indebtedness. *Carter v. Thorson*, 5 S. D. 474; 59 N. W. Rep. 469.

93. Commissioner to submit estimate. [Ch. 99, '91.] § 5. On the assembling of the legislature at any regular session thereof, or as soon thereafter as possible, the commissioner of public printing shall submit to that body an estimate of the probable cost of the printing for the ensuing two years.

94. Commissioner not be a party to contract. [Ch. 99, '91.] § 6. The commissioner of public printing is hereby prohibited from becoming

a party to any contract for printing for the state directly or indirectly, and any violation of this section shall be deemed a misdemeanor and punishable by a fine of not less than two hundred nor more than five hundred dollars or by imprisonment in the county jail not less than thirty days nor more than one year.

95. Distribution of laws. [Ch. 105, '91.] § 6. Immediately after the laws are bound the secretary of state must distribute the same to such officers as are entitled to a copy thereof as provided by law. He shall also send a copy to each department of the government at Washington, to the library of congress five copies, to the state library of each state and territory in the union one copy, in exchange, and deposit in the state library of this state one hundred and fifty copies for the use of the legislature when in session. The expense incurred for postage and express in carrying out the provisions of this section shall be certified to the state auditor, who shall thereupon draw his warrant upon the state treasurer, in favor of the secretary of state, for the full amount of such postage and express charges.

96. Secretary of state may appoint an assistant. [Ch. 9, '90.] § 1. That the secretary of state shall have power, when in his opinion it is necessary, to appoint an assistant secretary of state, whose appointment shall be evidenced by a certificate under the official seal of the state of South Dakota, and continue during his pleasure. The assistant secretary so appointed, before entering upon the duties of his office, shall take and subscribe the usual oath of office required by law, which said appointment and oath shall be filed in the office of the secretary of state. In case of the absence or disability of the secretary of state, the assistant secretary shall perform all and the several duties required by law of the secretary.

ARTICLE 5. PUBLIC EXAMINER.

97. Appointment — qualification — term — bond. Two competent persons, one of whom shall be a republican, who shall be skilled accountants and well versed as experts in the theory and practice of book-keeping, and who are not incumbents of any public office under the state of South Dakota or any county, municipality or public institution therein, and who shall not own, hold or control any stocks, capital or bonds, or the office of trustee, assignee, officer or employe of any banking, annuity, safe deposit, trust company, moneyed or savings institution or corporation created under the laws thereof, shall be appointed by the governor, by and with the advice and consent of the legislature, who shall be styled public examiners, and each of whom shall make

and file with the secretary a bond with at least three sureties, to be approved by the governor in the penal sum of twenty-five thousand dollars, for the faithful discharge of his duties. Said examiners shall hold office for two years from the first day of March, 1887, and until their successors shall have been appointed and qualified, and execute the duties, as herein prescribed; and in case of a vacancy by death, removal, resignation or otherwise, the governor shall fill the same by appointment. The governor is authorized to remove from office any public examiner who violates or fails to faithfully discharge the duties of his office, and to appoint his successor, who shall hold office until the end of the next legislative assembly, unless sooner removed, as above provided. [C. L. 117.]

98. State divided into two districts. The state is hereby divided into two districts. All of that portion of the state situated south of the south lines of the counties of Richland, Sargent, Dickey, McIntosh, Emmons, Morton, Hettinger and Boreman, in the said state, shall constitute the first district; and all of said state north of the said south lines of the said counties shall constitute and be known as the second examiner's district; and in making the appointment of public examiners the governor shall assign the district, and have power, in case the public service may best be served, to change said examiners from one district to the other. [C. L. 118.]

99. Powers and duties of examiners. It shall be the duty of said public examiners authorized and empowered by this act, in their discretion to assume and exercise a constant supervision over the books and financial accounts of the several public, educational, charitable, penal and reformatory institutions, belonging to the state, and within said examiner's district. Each examiner shall prescribe and enforce correct methods of keeping the financial accounts of said institutions, by himself or duly appointed deputy, and instruct the proper officers thereof in the due performance of their duties concerning the same. It shall be the examiner's duty to visit each of the said state institutions within his district, by himself or duly appointed deputy, at irregular periods, without previous notice to the officers thereof, at least twice each year, and make an exhaustive examination of the books and accounts thereof, including a thorough inspection of the purpose and detailed items of expenditure, and the vouchers therefor. [C. L. 119.]

100. Uniform system of bookkeeping required. It shall be the duty of the said examiners to order and enforce a correct and, as far as practicable, uniform system of bookkeeping, by state and county treasurers and auditors, so as to afford a suitable check upon their mutual action, and insure the thorough supervision and safety of the state and county

funds. They shall have full authority to expose false and erroneous systems of accounting, and, when necessary, instruct, or cause to be instructed, state and county officers in the proper mode of keeping the same. It shall be their duty to ascertain the character and financial standing of all present and proposed bondsmen of state and county officers, within their districts. Each examiner shall require of county treasurers within his district, from time to time, as often as he shall deem necessary, a verified statement of their accounts; and he shall personally or by duly appointed deputy, visit said office, without previous notice to such treasurers, at irregular periods of at least once a year, or when requested by any board of county commissioners, and make a thorough examination of the books, accounts and vouchers of such officers, ascertaining in detail the various items of receipts and expenditures; and it shall be his duty to inspect and verify the character and amount of any and all assets and securities held by said officers in public account, and to ascertain the character and amount of any commissions, percentages, or charges for services exacted by such officers without warrant of law. Each examiner shall report to the attorney general the refusal or neglect of county officers to obey his instructions, and it shall be the duty of the said attorney general to promptly take action to enforce compliance therewith. The said examiner shall report to the governor the result of his examination, which shall be filed in the executive office, as well as any failure of duty by financial officers, as often as he thinks required by public interests; and the governor may cause the results of such examinations to be published, or, at his discretion, to take such action for the public security as the exigency demand; and if he should deem the public interests to require, he may suspend any such officer from further performance of duty until an examination be had or such security obtained as may be demanded for the prompt protection of the public funds. [C. L. 120.]

The governor, upon receipt of report from public examiner, has power to remove from office the trustees of a public institution for misconduct. *Territory v. Cox et al.*, 6 Dak. 501. (Appendix.)

Power of removal is not judicial in the sense that it cannot be exercised by an executive. *Id.*

101. To visit without notice public institutions. The examiners under this act shall in like manner and with authority visit within their individual districts without prior notice, each of the banking, insurance, saving, annuity, safe deposit, loan or trust companies, and other moneyed corporations created under the laws of this state, and thoroughly examine into their affairs and ascertain their financial condition at least once in each year. It shall be the duty of such examiner to carefully inspect and verify the validity and amount of the securities and assets held

by such institutions, examine into the validity of mortgages held by savings banks, and see that the same are duly recorded, and ascertain the nature and amount of any discount or other banking transactions which he may deem foreign to the legitimate and lawful purposes of savings institutions. He shall inquire into and report any neglect or infringement of the laws governing such banking, annuity, safe deposit, trust companies, moneyed and savings institutions, and for such purpose shall have power to examine the officers, agents and employes thereof, and all persons doing business therewith. He shall forthwith report the condition of such corporations so ascertained, to the governor, together with his recommendations or suggestions respecting the same, and the governor may cause the same to be published, or, in his discretion, take such action as the exigencies of the case may seem to demand. [C. L. 121.]

102. Duty of public officer to assist examiner. To enable said examiner to perform the services herein required of him, the trustees and financial officers and managers of the several state institutions, the county and state treasurers and auditors, and other county and state officers, and officers and employes of all banking, insurance, annuity, safe deposit, trust companies, moneyed and savings institutions herein referred to, shall afford all reasonable and needed facilities, and it is hereby made the duty of all such trustees, officers, managers, and employes to make returns and exhibits to the said examiner, under oath, in such form and at such time or times as he shall prescribe; and each and every person so required who shall refuse or neglect to make such return or exhibit, or to make or give such information as may be required by said examiner, shall be deemed guilty of felony; and if any person in making such exhibit, or giving such information, or affording any statement required under this act, on his oath, shall knowingly swear falsely concerning the same, he shall be deemed guilty of perjury and punished accordingly. [C. L. 122.]

103. Penalty for obstructing examiner. Every person or persons who shall wilfully obstruct or mislead the public examiner in the execution of his duties, as herein prescribed, shall be subject to a conviction and punished therefor, in the same manner as is provided for the conviction and punishment of persons obstructing or hindering any other officers, ministerial, judicial or executive under the authority and laws of this state. And said examiner shall have full power and authority for the various purposes named, to examine any of the books, papers, accounts, bills, vouchers and other documents or property of any or all of the aforesaid state institutions, moneyed, banking, insurance, annuity, safe deposit, trust companies and moneyed or insurance corporations,

and county or state officers and custodians of county and state funds, and also to examine under oath, any or all of the trustees, managers, officers, employes and agents of such institutions and moneyed and savings corporations, and other persons in the control of, or doing business with said moneyed and savings institutions, and the county and state officers and custodians of county and state funds aforesaid. The said examiner is empowered to issue subpoenas and administer oaths in the same manner and with the same power to enforce obedience thereof in the performance of his said duties, as belong and pertain to courts of law in this state; and any person refusing access by said examiner to any such books or papers, or any trustee, manager, officer, agent, clerk, employe, or other person aforesaid, who shall obstruct said access or refuse to furnish any required information, or who shall in any manner hinder the thorough examination required by this act, of the officers, state, moneyed, banking, insurance, annuity, safe deposit, trust companies and savings institutions, or pertaining to the county and state officers aforesaid, shall be deemed guilty of felony, and shall be liable, on conviction, to a fine of one thousand dollars or imprisonment in the state prison for a term of one year. And when necessary to employ stenographers or clerical help, the expense incurred therefor shall be collected by the examiner from the county or corporation in interest. [C. L. 123.]

Public examiner law does not authorize the governor to remove any officer from office. *State ex rel. Holmes, State's Attorney, v. Shannon*, 7 S. D. 319; 64 N. W. Rep. 175.

If so it is abrogated by section 4, article 16, Constitution.

104. Annual report. The said examiners shall each make an annual written report to the governor, of his various proceedings, embodying therein an abstract of the condition and statistics of the several institutions, and county and state finances ascertained by him, which report shall be printed to the number of one thousand copies, and shall be included with other official reports in the volume of executive documents. [C. L. 124.]

105. Compensation of examiner. [Ch. 135, '93, C. L. 125.] § 1. For the services required under this act, the public examiner shall receive an annual salary of fifteen hundred dollars, and not to exceed seven hundred and fifty dollars for the incidental expenses of his office, which sum shall be paid by the state treasurer, in the same manner as the other salaries and expenses of state officers are paid. And if the said examiner shall directly, or indirectly, receive any compensation or pay for any services, or extra service, or neglect of service other than is provided in this act, he shall be deemed guilty of a felony, and on conviction thereof, shall be subject to a fine not exceeding ten thousand dollars, or im-

prisonment for a term of not exceeding ten years, or both, in the discretion of the court.

106. Duties of attorney general. It shall be the duty of the attorney general, when called upon by either of the public examiners, to aid in any investigation or matter needing legal advice or inquiry, and to supervise the prosecution of all offenders under the provisions of this act. [C. L. 126.]

INSPECTOR OF OILS.

107. Inspection required. [Ch. 68, '97.] § 1. All mineral or petroleum oil, or any fluid or substance which is a product of petroleum, or into which petroleum or any product of petroleum enters or is found as a constituent element, whether manufactured in the state or not, shall be inspected as provided in this act before being offered for sale for consumption for illuminating purposes in this state. Every person, firm or corporation shipping into, or manufacturing within the state such illuminating oils, shall stamp or brand each and every package, barrel or cask with the number or name of the grade of oil contained in such package, barrel or cask, and shall forward to the oil inspector an analysis of each and every grade of oil shipped into or manufactured in the state; such analysis must show the per cent. of light and heavy oils in each grade when subjected to fractional distillation.

108. Appointment of inspector — duties — test — penalty. [Ch. 68, '97.] § 2. The governor shall appoint a suitable person, resident of this state, who is not interested in the manufacturing, dealing or vending any of the illuminating oils specified in section one of this act, as state inspector of oils, whose term of office shall be two years from the date of appointment, except the first term, which shall be for the period of three years, or until his successor shall be appointed and shall qualify. It shall be the duty of said inspector, or his deputies, hereinafter provided for to examine and test the quality of all such oils offered for sale by any manufacturer, vender or dealer; and if, upon such testing and examination they shall meet the requirements hereinafter specified, he shall fix his brand or device, viz.: "Approved, flash test, — degrees," inserting the actual flash test, with the date of his official signature upon the package, barrel or cask containing the same. And to more effectually carry out the provisions of this act it shall be lawful for any state inspector or his deputies to enter into or upon the premises of any manufacturer of, vender of or dealer in said oils; and if any such oils intended for consumption for illuminating purposes within the state shall be there found which should have been inspected as

provided for in this act, and have not been, the inspector shall proceed to test and brand the same. It shall be lawful for any manufacturer, vender or dealer to sell oils so tested if they are found to comply with the requirements of this act and are properly branded "Approved," but if such oils so tested shall not meet said requirements, the words "Rejected for Illuminating Purposes" shall be marked in plain letters upon the package, barrel or cask containing them; and it shall be lawful for the owner or owners thereof to sell them for illuminating purposes for consumption in this state. If any person shall sell or offer for sale such rejected oils for such purposes, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a penalty in the discretion of the court in any sum not exceeding three hundred dollars (\$300).

109. May appoint deputies — test — requirements. [Ch. 68, '97.]
 § 3. The state inspector provided for in this act is hereby authorized to appoint and station a sufficient number of deputies for the proper enforcement of this act, which deputies are hereby empowered to perform the duties of inspection, and shall be liable to the same penalties as the state inspector; *provided*, that the state inspector may remove any of said deputies for reasonable cause. The state inspector and his deputies shall provide themselves at their own expense with the instruments, stencils, brands and stamps necessary for the proper performance of their duties, and when called upon for that purpose they shall, as promptly as may be possible, inspect all oils hereinbefore mentioned, and shall reject for illuminating purposes such of them as will not conform to the following conditions: First, color — The color shall be white or light yellow. It may or may not have a bluish opalescence. Second, flash test — It shall not give a flash test below one hundred and five degrees Fahrenheit, open test. Third, impurities — It shall not contain more than a trace of any sulphur compound. It shall be a pure hydro-carbon oil, and shall not contain more than ten per cent. by weight of residue after being distilled at a temperature of above five hundred and seventy degrees Fahrenheit. The oil tester and mode of testing recommended by the state board of health shall be used and followed by the state inspector and his deputies. Whenever, in the opinion of the state inspector, or any of his deputies, there is sufficient cause to justify a more complete test of any oil or oils than that provided for in this section he shall do so, or cause the same to be done, as follows: He shall procure a sample or samples of such oil or oils, making a note of the grade as stamped on the package, barrel or cask, and forward such sample or samples to the nearest state educational institutions where a chemical laboratory is maintained and a professor of chemistry is in charge of the same. The state inspector shall then make an analysis

of such oil or oils, or cause the same to be done, by the professor in charge of such laboratory. If such analysis be made by the professor, said professor shall make and sign a report showing the result of such analysis and forward the same to the state inspector, or the deputy forwarding such samples; *provided*, that no professor of such laboratory shall be required to make an analysis until at least twelve samples shall have been received by him for analysis.

110. Oath and bond of inspectors. [Ch. 68, '97.] § 4. Every person appointed as state inspector or deputy inspector, before he enters upon the discharge of the duties of his office, shall take oath or affirmation prescribed by the constitution and the laws of this state, and shall file the same in the office of the secretary of state. The state inspector shall execute a bond to the state of South Dakota in the sum of twenty thousand dollars (\$20,000) with such surety as shall be approved by the secretary of state, conditioned for the faithful performance of the duties herein imposed upon him, which bond shall be for the use of all persons aggrieved by the act or neglect of said inspector, and the same shall be filed with the secretary of state. Each deputy inspector, before he enters upon the duties of his office, shall execute a bond to the state inspector in the sum of five thousand dollars (\$5,000), with such sureties as may be approved by the state inspector. Such bond shall be filed with the state inspector, shall be conditioned for the faithful performance of the duties herein imposed, and shall be for the use of all persons aggrieved by the act or neglect of said deputy inspector.

111. Fees for inspection — records to be kept. [Ch. 68, '97.] § 5. The state inspector, or deputy inspector, is entitled to demand and receive from the owner of any oils tested one quarter of a cent per gallon for all oils inspected; ten cents for each fifty gallons of oil inspected shall be used for paying the salary and expenses of the state inspector and his deputies. Two and one-half cents for each fifty gallons of oil inspected shall be used for purchasing apparatus for chemical laboratories in state institutions for the purpose of making analysis and for the fees of the professors making such analysis. It shall be the duty of the state inspector to keep an accurate record of all oils tested and branded by him, which record shall state the date of inspection, the number of packages, barrels or casks rejected, the number approved, the manufacturer's brand, the name of the person for whom inspected, and the sum of money received for such inspection; and such record shall be open to all persons interested. At the beginning of every month each deputy inspector shall forward to the state inspector a true copy of such record and all moneys received by him for his inspection. In the month of January of each year the state inspector shall make and deliver to

the governor a report of the inspection by himself and deputies during the preceding calendar year.

112. Salary of inspector. [Ch. 68, '97.] § 6. The state inspector shall receive an annual salary of one thousand dollars (\$1,000). He shall also be allowed such further sum as he may actually and necessarily expend, whether for traveling expenses incurred in the discharge of his duties or for the proper prosecution of any case of offense arising under the provisions of this act. Each deputy inspector shall be entitled to a salary of fifty dollars (\$50) per month as herein provided. Each deputy inspector shall also be entitled to and allowed all actual and necessary expenses for railroad, stage, and steamboat fares incurred in the discharge of his duties as such deputy inspector, and for such other sums of money as by the authority of the state inspector he may expend in the prosecution of offenses arising under the provisions of this act. The professors of chemistry in the state educational institutions shall receive one dollar (\$1.00) for each analysis made in accordance with the provisions of this act. All salaries and expenses provided for in this act shall be paid by the state inspector out of the money received for the inspection of oils; *provided*, that in case the amount of money received for such inspections, according to the provisions of this act, shall not be sufficient to pay the salaries and expenses of the state inspector and his deputies as provided herein, the amounts of such deficiency shall be deducted from salaries pro rata to each; *provided*, further, that in case the amount of moneys received for the inspection of oils, according to the provisions of this act, shall be in excess of the sum required to pay the salaries and expenses of the state inspector and his deputies, as provided hereinbefore, the amount of such excess shall be paid into the state treasury for the benefit of the general fund. The state inspector shall render to the state auditor a detailed account of all the receipts and disbursements of his office, and shall also incorporate a copy of such reports in his annual reports to the governor.

113. Penalty for selling oil before inspection. [Ch. 68, '97.] § 7. Any person or persons, whether vender, manufacturer or dealer, who shall sell or attempt to sell to any person in this state any of the illuminating oils hereinbefore mentioned before having the same inspected as provided in this act shall be deemed guilty of a misdemeanor, and shall be subject to a penalty in any sum not exceeding three hundred dollars (\$300); and if any manufacturer, vender or dealer in any of said illuminating oils shall falsely brand the package, barrel or cask containing the same for the purpose of deceiving the purchaser thereof in any manner as to the contents of the same, shall be deemed guilty of a misdemeanor and shall be subject to the penalty in a sum not exceeding three

hundred dollars (\$300) nor less than one hundred dollars (\$100), or be imprisoned in the county jail not exceeding three months, or both, at the discretion of the court.

114. Unlawful disposal of empty barrels. [Ch. 68, '97.] § 8. Any person selling or dealing in the illuminating oils hereinbefore specified who shall sell or dispose of any empty barrel, cask or package that has once been used for such oils and has been branded by the state or deputy inspector before thoroughly canceling, removing or effacing the inspection brand on the same, shall be deemed guilty of a misdemeanor, and on conviction thereof shall pay a fine of ten dollars (\$10) for each barrel, cask or package thus sold or disposed of.

115. Adulteration of oil prohibited. [Ch. 68, '97.] § 9. No person shall adulterate with parafine or other substance for the purpose of sale or for use of any of the illuminating oils specified in this act in such a manner as to render them dangerous to use, nor shall any person sell or offer to sell, or knowingly use for illuminating purposes, any such adulterated oils, which by reason of being adulterated will emit a combustible vapor at a less temperature than one hundred and five (105) degrees Fahrenheit thermometer; providing, that such vaporizing point shall be determined in the manner and with the instrument as hereinbefore provided in section 3 of this act. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars (\$500), or by both such fine and imprisonment in the discretion of the court.

116. How gas or vapor may be used. [Ch. 68, '97.] § 10. Gas or vapor from petroleum, or of any of the products of petroleum, may be used for illuminating purposes when the oils from which said gas or [vapor] is generated are contained in closed reservoirs outside of the building lighted by said gas or vapor. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and shall upon conviction thereof be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars (\$300), or by both such fine and imprisonment at the discretion of the court; *provided*, that nothing in this act shall be construed so as to prohibit the use of street lamps of the lighter products of petroleum such as gasoline, benzine, benzole and naphtha.

117. Damages arising from sale of low grade oil. [Ch. 68, '97.] § 11. Whoever shall knowingly sell or cause to be sold any of the illuminating oils as specified in this act, which are below one hundred and five (105) degrees Fahrenheit, when tested as provided in section 3 of

this act, shall be liable to any person purchasing any such oil, or any person injured thereby, for any damage of property arising from any explosion thereof.

118. Inspectors must not traffic in oils. [Ch. 68, '97.] § 12. No state inspector or deputy inspector shall, while in office, traffic directly or indirectly in any of the oils which he has been appointed to inspect, and in case of violation of this provision, the offender shall be fined in any sum not exceeding five hundred dollars (\$500) and be removed from his position

119. Must report violation of law. [Ch. 68, '97.] § 13. It shall be the duty of the state inspector or any deputy inspector, who shall know of the violation of any of the provisions of this act, to enter complaint before any court of competent jurisdiction against any person so offending, and in case the state inspector or deputy inspector having knowledge of such violation shall neglect to enter complaint, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be removed from his position.

120. State's attorney to prosecute offenders. [Ch. 68, '97.] § 14. It shall be the duty of all state's attorneys to represent and prosecute on behalf of the people within their respective counties, all cases of offenses arising under the provisions of this act.

121. Disputes to be settled by inspector. [Ch. 68, '97.] § 15. All questions of dispute arising between the deputy inspector and manufacturer and dealers shall be submitted to the state inspector for his decision, and his decision shall be final.

122. Removal of inspector. [Ch. 68, '97.] § 16. It shall be the duty of the governor to remove from office any state inspector who shall prove himself to be either unfaithful or incompetent in the discharge of his duties.

123. Prosecutions. [Ch. 68, '97.] § 17. All prosecutions under this act shall be prosecuted in the name of the state of South Dakota.

INSPECTOR OF MINES.

124. Creation of office. [Ch. 112, '90.] § 1. That the office of inspector of mines of South Dakota be, and the same is, hereby created.

125. Office, how filled. [Ch. 112, '90.] § 2. The governor, by and with the consent and advice of the senate, shall appoint an inspector of mines, who shall be a citizen of the United States, a resident of South

Dakota, not under thirty years of age, who shall be practically acquainted with mines and mining in all its branches, and whose term of office shall be for two years unless sooner removed by the governor for cause, and whose office shall be at the city of Lead City, Lawrence county, South Dakota: *Provided*, the term of office of the inspector of mines, if appointed at the first legislative session, shall be for one year:

Provided, that when a vacancy occurs in the foregoing office from any cause, and the senate shall not be in session, the governor shall have power to appoint said inspector of mines, who shall perform the duties and receive the compensation of such office as herein provided until the next session of the legislature, when the governor shall submit such appointment to the senate for their approval or rejection. No person shall hold the office of inspector of mines of South Dakota who may be an employe of any mining company or corporation during his term of office, or who may be, during such term of service an officer of any mining company or corporation, or a director thereof. The inspector of mines shall, before entering upon his duties, take and subscribe an oath in the following form:

STATE OF SOUTH DAKOTA, }
 County of }

I,, of the county of, do solemnly swear that I will perform each and every duty required of me as inspector of mines of South Dakota; that I will at all times, while acting in such official capacity, fulfill the duties of such office according to the law and to the best of my skill and understanding; that I will never at any time while I hold the office of inspector of mines disclose to any one, directly or indirectly, under any circumstances whatsoever, any information relative to the value of any mining property that may have come to me in any visit to, or examination of, or knowledge of any such mining property within the state of South Dakota, while I am acting as such official; that I will never in any way take advantage of, or suffer any one else to take advantage of my knowledge relative to the value of any ore or mineral in any mine that I may acquire in any examination of any mine or shaft, or tunnel connected with any mine, or of any ore or mineral that I may see within any mine; that I will never deal in any mining properties, directly or indirectly, by bargain or sale, wherein I may have occasion to make any examination, or while I am acting as such inspector of mines; nor will I impart or express to any person any opinion I may form of the value of any mine, or any ore within any mine, or any part of any mine; that I shall consider this obligation as binding upon me while I am not acting as inspector as I shall while I am acting in such official capacity. To all of which I pledge my sacred honor, so help me God.

126. Seal. [Ch. 112, '90.] § 3. The inspector of mines shall have a seal bearing the words, "Inspector of Mines, South Dakota," which shall be kept by him exclusively for the use of his office, and said seal shall be affixed to official documents only.

127. Salary. [Ch. 112, '99; ch. 112, '90.] § 4. The inspector of mines shall receive a salary of twelve hundred dollars per annum. The salary of said inspectors shall be paid monthly out of the state treasury.

128. Incidental expenses. [Ch. 112, '90.] § 5. All necessary expenditures of money incurred by the inspector of mines, not exceeding one thousand dollars per annum, for traveling, rent, fuel, postage, stationery and printing, shall be paid out of any fund in the state treasury not otherwise appropriated, and the state auditor is hereby authorized to issue his warrants on the treasurer for the same: *Provided*, that proper vouchers shall be presented to the auditor, certified to under oath by said inspector, for all such expenditures.

129. Duties of inspector. [Ch. 119, '90.] § 6. It shall be the duty of the inspector of mines to visit, enter and examine in person any mine or piece of mining ground for the purpose of ascertaining the condition of the same in regard to its safety, ventilation and means of egress; and for this purpose he shall have access at any and all times to any mine slopes, levels, winzes, tunnels, drifts, cross cuts, shafts, works and machinery, for the purpose of such inspection.

Provided, however, that the working of such mine shall not be impeded or obstructed during such examination.

Provided, further, that this inspection shall not be at the expense of the owner, lessor, lessee or agent of the mine being examined; but said owners, lessor, lessee or agent shall render such assistance as may be necessary to enable the inspector to make the required examination.

130. Complaint — action thereon. [Ch. 112, '90.] § 7. Whenever the inspector of mines shall receive a formal complaint in writing, signed by three or more persons, setting forth that the mine in which they are employed is dangerous in any respect, he shall in person visit and examine such mine.

Provided, every such formal complaint shall in all cases specifically set forth the nature of the danger existing at the mine, and shall describe with as much certainty as is possible how such danger, apparently or really, renders such mine dangerous, the time the cause of such danger was first observed; and shall distinctly set forth whether or not any notice of such danger has been given by the complainants, or any one else to their knowledge to the superintendent of such mine; and if no such complaint has been made to such superintendent, the reason why

it has not been made. After such complaint shall have been received by the inspector of mines, it shall be the duty of such inspector to serve a certified copy thereof, but without the names of the complainants, upon the superintendent, or manager, or owner of such mine, at any time before he visits the same, and, as soon as possible, to visit such mine; and if from examination he shall ascertain that the said mine is, from any cause, in a dangerous condition, he shall at once notify the owner, lessor, lessee or agent thereof; such notice to be in writing, and to be served by copy on such owner, lessor, lessee or agent in the same manner as provided by law for the serving of legal notices or process; and said notice shall state fully and in detail in what particular manner said mine is dangerous or insecure, and shall require all necessary changes to be made without delay for the purpose of making such mine safe for the laborers employed therein; and in case of any criminal or civil procedure at law against the party or parties so notified, on account of loss of life or bodily injury sustained by any employee subsequent to such notice, and in consequence of a neglect to obey the inspector's requirement a certified copy of the notice served by the inspector shall be *prima facie* evidence of the culpable negligence of the party or parties so complained of. Nothing in this act shall be so construed as to give the control of any mine to the mine inspector or allow him to interfere with the working of any mine.

131. Must visit mines. [Ch. 112, '90.] § 8. It shall be the duty of the inspector of mines at least once in each year to visit each mining county in South Dakota, and examine as many of the mines in the different counties as practicable, and shall make such recommendations as in his judgment are necessary to insure the safety of the workmen employed therein; and whenever, from his examination, he shall find any mine to be in an unsafe condition he shall at once serve a notice upon the owner, lessor, lessee or agent thereof, as provided for in section seven of this act.

132. Actions in case of accidents. [Ch. 112, '90.] § 9. Whenever a serious or fatal accident shall occur in any mine in South Dakota it shall be the duty of the owner, lessor, lessee, agent or superintendent thereof to immediately, and by the quickest means, notify the inspector of mines; and upon receiving such notice the inspector in person shall at once repair to the place of accident and investigate fully the cause of such accident; and, whenever possible to do so, the inspector shall be present at the coroner's inquest held over the remains of the person or persons killed by such accident, and shall testify as to the cause thereof, and shall state whether in his opinion the accident was due to the negligence or mismanagement of the lessor, lessee, owner or agent of such mine, or the manager, superintendent, or other persons in charge. If

the inspector can not be immediately present in case of a fatal or serious accident occurring, it shall be the duty of the superintendent, owners, or persons in charge of the mine to have written statements made by those witnessing the same and duly sworn to. In case of no person being present at the time of the accident, then the statement of those first present shall be taken, which statement shall be sworn to before some person qualified to administer oaths; and such sworn statements shall be placed in the hands of the inspector upon the demand of that officer.

133. Penalty for neglect. [Ch. 112, '90.] § 10. Any owner, lessor, lessee or agent of any mine who shall fail to comply with the provisions of section nine of this act shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, and not less than two hundred dollars.

134. Children not to be employed. [Ch. 112, '90.] § 11. All corporations or individuals working mines in South Dakota who shall employ, or permit to be employed, in such mines any children under fourteen years of age shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars.

135. Official bond. [Ch. 112, '90.] § 12. The inspector of mines before entering upon the duties of his office shall give a good and sufficient bond in the penal sum of five thousand dollars conditioned upon the faithful performance of his duties and with two or more sureties. Said bond to be approved by the governor of South Dakota and filed with the state auditor.

136. Report to the governor. [Ch. 112, '90.] § 13. The inspector of mines shall make a report to the governor of South Dakota on the first day of December of each year, and said report shall enumerate all accidents that have occurred in the mines of South Dakota, which have occasioned serious injury or resulted fatally to persons employed therein, together with the nature and cause of such accident. Said report shall also contain statistical and other information which may tend to promote the development of the mineral resources of South Dakota; and shall generally set forth the result of the inspector's labors for the year. Such report shall be printed as are the reports of other state officers.

137. Official papers and records to be turned over to successor. [Ch. 112, '90.] § 14. All maps and plans of mines and papers belonging to the inspector's office, and relating to the business thereof, and all the records of said office shall be by him properly kept and arranged; and upon the expiration of his term of office, turned over to his successor.

138. When this act shall not apply. [Ch. 112, '90.] § 15. The provisions of this act shall not apply to mines in which no other person, but the owner, or owners, or lessees thereof, are permitted to work.

139. Mileage. [Ch. 112, '90.] § 16. The inspector of mines shall be allowed ten cents a mile for each mile actually and necessarily traveled in the discharge of his duties.

CHAPTER 6. PUBLIC BOARDS.

ARTICLE 1. BOARD OF TRUSTEES OF PUBLIC PROPERTY.

140. Board of trustees — constituted. The governor of the state, together with the secretary and auditor of the same, are hereby constituted a board of trustees who shall have charge and control of the capitol and the park and public grounds connected therewith. [C. L. 127.]

141. To submit estimates. Said board shall biennially, at the opening of the legislative assembly, report to said assembly an estimate of the appropriation in their judgment necessary to defray the expense of keeping the capitol building in repair, and for fuel and other incidental expenses to keep and maintain the state offices therein for the next two years. [C. L. 128.]

142. Appointment of commission. The governor shall appoint three citizens of the state commissioners, who shall perform the duties hereinafter specified. [C. L. 129.]

143. To give bonds — vacancies, how filled. Said commissioners shall, before entering upon their duties, enter into bonds in the sum of ten thousand dollars each, with good and sufficient sureties to be approved by one of the justices of the supreme court, payable to the state of South Dakota and conditioned for the faithful performance of their duties under this act, to fully account for all moneys that may come into their hands as such commissioners; and they shall also take and subscribe an oath to fully, faithfully and impartially carry out the provisions of this act, which oath shall be indorsed upon their bond, and the same shall be filed in the office of the state treasurer. If any of the commissioners fail to qualify, or should a vacancy occur at any time, the governor shall fill the vacancy by appointment, and the person so appointed shall qualify in the manner provided in this act. [C. L. 130.]

144. Reappraisal of real property. Said commissioners shall, if they deem the appraisal heretofore made too high, appraise all the real estate which was donated to the state under the provisions of chapter 104 of the general laws of 1883 (except so much thereof as has been sold), and fix a minimum price on each lot or tract of the said land, and

it shall be their duty to file a copy of said appraisement with the secretary of the state as soon as the same is completed. [C. L. 131.]

145. May advertise lots for sale. Said board of trustees shall, whenever the governor shall deem it advisable so to do, advertise said lots for sale for at least thirty days, and in such daily newspapers as they may select, not less than five in number, at least three of which shall be published without the state. Said notice shall contain a description of the property to be sold, and shall state the time and place of sale. On the day named in the advertisement said board of trustees shall proceed to sell to the highest bidder for cash, at a price not less than the appraised value, all said property, so long as may be necessary, not exceeding five days, after which time the board of trustees may sell at private or public sale, as they may deem expedient, until all the property aforesaid is sold. [C. L. 132.]

146. Deeds, how given. Every purchaser of lots shall deposit the purchase money therefor with the commissioners, who shall give a receipt for said money, which receipt shall specify the amount of money and the number of the lot and block for which the money was paid, and which receipt upon its presentation to the secretary of the state, shall entitle the person named therein to a deed in fee simple absolute from the state of South Dakota to the real estate named in the receipt, which conveyance shall be executed, for and in behalf of the state, by the governor, and attested by the secretary of the state under the seal of said state; and said secretary shall file and safely keep all receipts thus presented. [C. L. 133.]

147. Moneys to be credited to building fund. All moneys received by the commissioners for the sale of lots shall be forthwith deposited by them in the state treasury, and said money shall be placed to the credit of the state building fund. [C. L. 134.]

148. Expenses of commissioners, how paid. All the expenses incurred by the commissioners for advertising, stationery, and other necessary expenses shall be paid by the auditor of the state by his warrant upon the state treasurer, upon the certificate of the said commissioners; and the commissioners shall be paid for their services the sum of five dollars each for each and every day actually employed, by the warrant of the auditor of the state upon the state treasurer. [C. L. 135.]

BOARD OF RAILROAD COMMISSIONERS.

150. Election of commissioners. [Ch. 136, '93.] § 1. At the general election in November, eighteen hundred and ninety-four, and at each general election thereafter there shall be chosen, from districts, by the qualified electors of the state at large, as hereinafter provided, three railroad commissioners.

151. Term of office. [Ch. 111, '97.] § 1. Each railroad commissioner of the state of South Dakota hereafter elected shall hold office for the term of six (6) years commencing on the first Tuesday after the first Monday in January of the year following the year of each general election, and until his successor is elected and qualified.

152. Term of present incumbents determined by lot. [Ch. 111, '97.] § 2. The railroad commissioners chosen at the general election in the year of eighteen hundred and ninety-six, shall hold their offices for the terms of two (2), four (4), and six (6) years respectively, as shall be decided among them by lot at their first meeting after the taking effect of this act, in such manner as may be designated by the secretary of state

153. One chosen at each general election. [Ch. 111, '97.] § 3. That at the general election in the year eighteen hundred and ninety-eight and every second year thereafter at such election, there shall be chosen one person as railroad commissioner having the qualifications prescribed by law, who shall hold his office for a term of six (6) years from the first Tuesday after the first Monday in January following his election and until his successor is elected and qualified, which commissioner shall fill the vacancy caused by the expiration of the term of office of the commissioner whose term of office expires on the first Tuesday after the first Monday in January following his said election.

154. Vacancies, how filled. [Ch. 111, '97.] § 4. If a vacancy occur in the office of railroad commissioner from death, resignation or otherwise, the governor of the state shall make temporary appointment to fill such vacancy, but the person so appointed shall hold such office only until the next general election and until his successor is elected and qualified. And, notwithstanding such appointment, there shall be chosen at the next general election after such such vacancy occurs in such office, a railroad commissioner to fill such vacancy, who shall hold his office only for the unexpired term of the person originally elected thereto.

155. Districts. [Ch. 136, '93.] § 2. For the purposes of this act the state shall be divided into three districts to be designated railroad commissioner districts, as follows: The first district shall comprise all that part of the state east of the Missouri river and south of the second standard parallel; the second district shall comprise all that portion of the state north of the second standard parallel and east of the Missouri river; the third district shall comprise all that portion of the state lying west of the Missouri river.

156. Qualifications. [Ch. 136, '93.] § 3. No person shall be eligible to the office of railroad commissioner except a citizen of the United States, who is a qualified elector of this state and who shall have attained the age of twenty-five years, and shall have resided within this state for at least two years next preceding his election, and at the time of his election be a resident of the district from which he is elected, and who is not qualified as provided by section two of chapter one hundred and ten of the session laws of eighteen hundred and eighty-nine of the territory of Dakota.

157. Persons disqualified. [Ch. 110, '89.] § 2. No person shall be qualified to hold the office of railroad commissioner, who is the owner of bonds or stocks in any railroad company, or who is in the employment of, or in any manner pecuniarily interested in any railroad or in any railroad corporation, public workhouse or elevator

158. Board of railroad commissioners — powers. [Ch. 136, '93.] § 4. The railroad commissioners so elected shall constitute a board to be known and designated as the board of railroad commissioners of the state of South Dakota, and they shall keep their office at the seat of government. They shall have power to elect a secretary and prescribe his duties.

159. Salary. [Ch. 126, '99; ch. 136, '93.] § 5. That the salary of such commissioners shall be fifteen hundred dollars each per annum and the salary of the secretary shall not exceed twelve hundred dollars per annum.

160. Oath and bond. [Ch. 136, '93.] § 6. Such railroad commissioners shall take and subscribe the same oath as required of other state officers, and shall execute to the state a bond in the penal sum of five thousand dollars, with sufficient sureties to be approved by the secretary of state and conditioned for the faithful performance of his duties, which oath and bond shall be filed with the official bonds of other state officials.

161. Division of cars. [Ch. 110, '89.] § 7. When any railroad company doing business in this state, shall be unable for any reasonable cause to furnish cars at any railway station, or side track in accordance with the demands made by all persons demanding cars at such station or side track for the shipment of a car load lot or lots of freight, such cars as are furnished shall be divided daily as equally among the applicants until each shall have received one car, when the balance shall be divided ratably to each shipper in proportion to the amount of daily receipts of grain or other freight, or to the amount of grain offered at such station or side track, provided that every application made in good faith on an earlier day shall be filled before supplying any car to any applicant of a succeeding day.

162. Must ship without discrimination. [Ch. 110, '89.] § 5. Any railroad company doing business in this state, when requested by any person wishing to ship grain on its road shall receive and transport such grain in bulk, and permit the same to be loaded either on its track adjacent to its depot, or at any warehouse or side track, at any station, without discrimination or distinction as to the manner or condition in which such grain is offered for transportation, or as to the person, corporation, warehouse, elevator or place where, or to which it may be consigned, and shall receive the same, in car load lots, from wagons, sleighs or other vehicles, on their side tracks at any station, the same as when offered from warehouses, elevators, allowing a reasonable time for loading them, and for the purpose of loading the same, shall place the cars in convenient places, easy access by wagons or sleighs or other vehicles, and shall after the same have been loaded, whether at side track, elevator, warehouse or depot without unnecessary delay, proceed to ship the same to the place where the same is consigned.

163. Track from elevator to railroad. [Ch. 110, '89.] § 6. It shall be lawful for the owner or owners of any elevator, warehouse or mill at any station on the line or at the termination of any railroad in this state, to construct from such elevator, warehouse or mill, a railroad track to the track of any railroad company, and to connect with the same by switch at his or their own expense, and it shall be the duty of any such railroad company to allow such connection. Such side track and switch shall at all times be under the control and management of and kept in repair by such railroad company, provided, that the party for whose benefit such side track and switch shall be constructed, shall pay to such railroad company the actual cost of maintaining such side track and switch, which payment shall be made monthly, and in case such payment shall not be made as provided, then and in that case the obligations of this section upon said railroad companies shall from and

thereafter cease and be inoperative as against them until such costs and expenses are fully paid.

164. Short and long haul tariffs. [Ch. 110, '89.] § 8. It shall be unlawful for any railroad company doing business in this state to charge or receive any greater compensation for the transportation of passengers of like kind or class, or quantity of property under substantially similar circumstances or conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, but this shall not be construed as authorizing any railroad company to charge or receive as great compensation for the shorter as for the longer distance, and no such railroad company shall charge, demand or receive from any person, company or corporation for the transportation of passengers or property a greater sum than it shall at the same [time] demand, charge or receive from any other person, company or corporation for a like service from the same place; it shall be unlawful for any such railroad company, directly or indirectly, by any special rate, rebate, drawback or other device, to charge, collect or receive from any person, company or corporation, a greater or less compensation for any service rendered, or to be rendered, in the transportation of persons or property than it charges, demands, collects or receives from any other person, company or corporation for doing for him or them a like or contemporaneous service in the transportation of like kind of traffic under substantially similar circumstances and conditions.

165. Charges limited. [Ch. 110, '89.] § 9. No railroad company shall charge, demand or receive from any person, company or corporation, an unreasonable price for transportation of property or for the hauling or storage of freights, or for the use of its cars or for any privilege or service afforded by it in the transaction of its business as a railroad company, and shall not demand the payment of freight beyond the point to which the goods or property is consigned by the shipper.

166. Time to remove property from cars. [Ch. 110, '89.] § 12. Any consignee, or person entitled to receive the delivery of any freight shipped to him in car load lots, by any railroad company, shall have twenty-four hours free of expense after notice of arrival by the company to the consignee or person entitled to receive the same in which to remove the same from the cars of such railroad company, which said twenty-four hours shall be held to embrace such time as the car containing such property is placed and kept by such railroad company in a convenient and proper place for unloading, and it shall not be held to be in a proper place for unloading unless it can be reached with teams or other suitable means for removing the property from the cars, and

reasonably convenient to the depot of the company at which it is accustomed to receive and unload merchandise consigned to that station or place.

167. Duties of commissioners. [Ch. 158, '95; ch. 110, '89.] § 15. It shall be the duty of the railroad commissioner residing in the district where complaint is made to personally investigate within thirty days and ascertain whether the provisions of this act are violated by any railroad company and for the purpose of making such investigation it shall be his duty to visit any city or town on the line of any railroad company in this state where a complaint shall be made by the mayor of any city or chairman of board of township supervisors or village trustees, or county commissioner of the county where such city or town is located, and whenever the facts in any manner ascertained by said commissioner, either by personal investigation or by petition, or complaint of any citizen in this state shall in his judgment warrant prosecution under the provisions of this act, it shall be the duty of said commissioner to immediately cause suit to be commenced and prosecuted against any railroad company as provided for in this act; for the purpose of making the investigation herein provided for, said commissioner shall have full power to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, schedules, agreements, and documents relating to any matter under investigation and to that end may invoke the aid of any court in this state in requiring the attendance and testimony of witnesses and the production of books, papers and documents under the provisions of this section; and any court in this state within the jurisdiction of which such inquiry is carried on shall in case of contumacy or refusal to obey the subpoena or other proper process issued by said commissioner to any common carrier or person subject to the provisions of this act, issue an order requiring such railroad company to appear before said commissioner and give evidence touching or relating to the matter in question. Any failure to obey such order of the court shall be punished by such court as a contempt thereof. Whenever an investigation shall be made by the said commissioner as provided in this section, it shall be his duty to make a report in writing in respect thereto to the board which shall include the findings of fact upon which the conclusions of the commissioner are based, together with his recommendation as to what reparation, if any, shall be made by the railroad company to any party or parties who may be found to have been injured, and all reports of investigations of said commissioners, or any of them, shall be entered in a book of record, and a copy thereof shall be fur-

nished to the party who may have complained, and to any railroad company that may have been complained of. If such railroad company shall fail to make reparation for the injury alleged to have been done, or to correct the wrong complained of, an action shall be commenced by said board of railroad commissioners against such offending railroad company as herein provided. Any injured person, firm, corporation or association, or any mercantile, agricultural or manufacturing association, or any body politic or municipal corporation or organization may make complaint to such railroad commissioners of a violation of any of the provisions of this act by any railroad company, and if they shall find as herein provided that the charges made are true and well founded and that such railroad company has violated any of the provisions of this act or any other act then in force relating to railroad companies in this state, it shall be the duty of said commissioners to institute action against such offending railroad company, and to prosecute same in the manner and by the means provided in this act. If any railroad commissioner or commissioners shall fail or neglect to perform any of the duties imposed upon him or them by this act, or by any other law in force in the state of South Dakota, he or they shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars; or imprisonment not exceeding one year, and by a forfeiture of his or their office as railroad commissioner or commissioners, either or all in the discretion of the court. And it shall be the duty of the attorney general of this state, whenever he shall have good reason to believe that any railroad commissioner or commissioners in this state shall have failed to discharge any duty imposed by law upon him or them, to prosecute such action against said railroad commissioner or commissioners to final judgment and the complaint in such action against said railroad commissioner or commissioners may be made by any citizen of this state who may have been injured by the failure of said railroad commissioner or commissioners to perform his or their duties, or by the attorney-general. The board of railroad commissioners shall hold regular meetings at least once each month at their office which shall be located at some central point within the state to be selected by a majority of said commissioners.

168. Penalty on railroad corporation — separate offenses. [Ch. 110, '89.] § 20. Any railroad company found guilty of violating any of the provisions of this act shall be fined in a sum not less than \$1,000 nor more than \$10,000, to which shall be added the costs of action, and each day's refusal or neglect of any railroad company, to do or perform any act required by this act to be done, and each day's commission of any act or thing prohibited by this act shall be taken to be a separate

offense and such railroad company may be prosecuted and convicted for each day's offense separately, and the conviction thereof shall not be a bar to the prosecution and conviction of the same on any other day.

169. Fine not a bar to individual action. [Ch. 110, '89.] § 21. Such conviction or fine, or the payment of any fine shall not operate as or be a bar to the prosecution of such railroad company by any person, company or corporation sustaining damage by reason of the violation of any of the provisions of this act, but in addition thereto any person, company or corporation suffering or sustaining any damage by reason of such violation by any railroad company may maintain an action in his or their own name and behalf against such company and in case of a recovery the court shall assess treble damage against such offending railroad company in favor of the party suffering such damage or injury.

170. Subject to suit in equity. [Ch. 110, '89.] § 22. In addition to the foregoing actions, such railroad companies shall be subject to all actions in equity or chancery now cognizable in the courts of this state upon a proper showing.

171. Annual report of commissioners. [Ch. 110, '89.] § 23. The said railroad commissioners shall on or before the first Monday of December, of each year, make a report to the governor of their doings for the preceding year, containing such facts, statements and explanations as will disclose the workings of the system of railroad transportation in this state and its relation to the general business and prosperity of the citizens of this state, and such suggestions and recommendations in respect thereto as may to them seem appropriate. Said report shall also contain as to every railroad company doing business in this state:

1. The amount of its capital stock.
2. The amount of its preferred, if any, and the amount of its preference.
3. The amount of its funded debt and the rate of interest.
4. The amount of its floating debt.
5. The cash and present value of its road and equipment in this state, including permanent way, buildings and rolling stock, all real estate used exclusively in operating the road, and fixtures and conveniences for transacting its business.
6. The estimated cash value of all property owned by such railroad company in this state with a schedule of the same, not including lands granted in aid of its construction.
7. The number of acres situated in this state originally granted in aid of the construction of its said road by the United States or by this state.
8. Number of acres of said land remaining unsold.

9. A list of the officers and directors with their respective places of residence.

10. Such statistics of the road and of the transportation and business for the year within this state as may in the judgment of the commissioners be necessary and proper for the information of the legislative assembly, or as may be required by the governor; such report shall exhibit and refer to the condition of the railroad company on the first day of July of such year, and the details of its transportation business transacted during the year, ending June 30.

11. The average amount or tonnage that can be carried over each road within the state with one engine of a given power.

172. Railroad companies must make annual report. [Ch. 157, '95; Ch. 110, '89.] § 24. To enable such commissioners to make such report the president or managing officer of each railway company doing business in this state shall annually make to the said commissioners on the fifteenth day of the month of September such returns in the form prescribed by the interstate railway commerce commission of the United States; such official returns shall be verified by the oath of the officer making them, and any railroad corporation when returns shall not be made as herein prescribed by the fifteenth day of September shall be liable to the penalty prescribed in this act.

173. Majority vote decides. [Ch. 110, '89.] § 25. All questions arising in the action of the said railroad commissioners shall be decided and determined by a majority vote.

174. Application of act — "railroad" defined. [Ch. 110, '97.] § 1. The provisions of this act shall apply to the transportation of passengers and property, and to receiving, delivering, storage and handling of property wholly within this state, and shall apply to all railroads, corporations and railway companies, express companies, car companies, sleeping car companies, freight or freight line companies and to any common carrier or carriers engaged in this state in the transportation of passengers or property by railroad therein, and shall also be held to apply to shipments of property made from any point within the state, to any point within the state, whether the transportation of the same shall be wholly within the state or partly within this and an adjoining state or states. The term "railroad" as used in this act, shall include all bridges and ferries used or occupied in connection with any railroad and also the road in use by any corporation, receiver, trustee or other

person operating a railroad, whether owned or operated under contract, agreement, lease or otherwise, and the term "transportation" shall include all the instrumentalities of shipment or carriage, and the term "railroad corporation" contained in this act shall be deemed and taken to mean all corporations, companies or individuals now owning or operating, or which may hereafter own or operate any railroad in whole or in part in this state; and the provisions of this act shall apply to all persons, firms and companies and to all associations of persons, whether incorporated or otherwise, that shall do business as common carriers upon any of the lines of railroad in this state (street railroads excepted) the same as to railroad corporations herein mentioned.

175. Commissioners have general supervision. [Ch. 110, '97.] § 2. The railroad commissioners shall have the general supervision of all railroads in the state operated by steam, and shall inquire into any neglect or violation of the laws of this state by any railroad corporation doing business herein, or by the officers, agents or employes thereof, and shall also from time to time carefully examine and inspect the condition of each railroad in this state and of its equipment, and the manner of its conduct and management, with reference to the public safety and convenience. And if any bridge shall be deemed unsafe by the commissioners, they shall notify the railroad company immediately, and it shall be the duty of said railroad company to repair and put in good order within ten days after receiving said notice, said bridge. Whenever, in the judgment of the railroad commissioners, it shall appear that any railroad corporation fails, in any respect or particular, to comply with the terms of its charter or the laws of the state, or whenever in their judgment any repairs are necessary upon its road, or any addition to its rolling stock, or any addition to or change of its stations or station houses, or any change in its rates of fare for transporting freight or passengers, or any change in the mode of operating its road and conducting its business is reasonable and expedient in order to promote the security, convenience and accommodation of the public, said railroad commissioners shall inform such railroad corporations of the improvements and changes which they adjudge to be proper, by notice thereof in writing to be served by leaving a copy thereof certified by the commissioner's secretary, with any station agent, clerk, treasurer or any director of said corporation, and a report of the proceedings shall be included in the annual report of the commissioners to the legislature. Nothing in this section shall be construed as relieving any railroad company from their present responsibility or liability for damage to person or property.

176. Commissioners' powers. [Ch. 110, '97.] § 3. Said commissioners shall have power in the discharge of the duties of their office, to

examine any of the books, papers or documents of any such corporation, or to examine under oath or otherwise, any officer, director, agent or employe of any such corporation; they are empowered to administer oaths; and any person who may willfully obstruct said commissioners in the performance of their duties, or who may refuse to give any information within his possession that may be required by said commissioners within the line of their duty, shall be deemed guilty of a misdemeanor, and shall be liable, on conviction thereof, to a fine not exceeding one thousand dollars, in the discretion of the court, the costs of such investigation to be first paid by the state on the certificate of said commissioners.

177. Shall furnish suitable cars. [Ch. 110, '97.] § 4. It shall be the duty of any railroad corporation when within their power to do so, and upon reasonable notice, to furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight, and to receive and transport such freight with all reasonable dispatch, and to provide and keep suitable facilities for the receiving and handling the same at any depot on the line of its road; and also to receive and transport in like manner, the empty or loaded cars, furnished by any connecting road, to be delivered at any station or stations on the line of its road, to be loaded or discharged, or reloaded and returned to the road so connecting and for compensation it shall not demand or receive any greater sum than is accepted by it from any other connecting railroad, for a similar service; and said railroad corporation shall not discriminate in the furnishing of cars in favor of any corporation, firm or individual.

178. Charges must be reasonable. [Ch. 110, '97.] § 5. All charges made for service rendered or to be rendered in the transportation of passengers or property in this state, as aforesaid, or in connection therewith, or for the receiving, delivering, storage or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared unlawful.

179. Unjust discrimination. [Ch. 110, '97.] § 6. If any common carrier subject to the provisions of this act, shall directly or indirectly, by any special rate, rebate, drawback or otherwise devise, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property subject to the provisions of this act, than it charges, demands, collects or receives from any other person or persons for doing for him a like or contemporaneous service in the transportation of a like kind of traffic, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared

to be unlawful; this section, however, is not to be construed as prohibiting a less rate per one hundred pounds in a car load lot than is charged, collected or received for the same kind of freight in less than a car load lot.

180. Preferences unlawful. [Ch. 110, '97.] § 7. It shall be unlawful for any common carrier subject to the provisions of this act, to make or give any preference or advantage to any particular person, company, firm, corporation or locality or any particular description of traffic, in any respect whatever, or to subject any particular person, company, firm, corporation or locality or any particular description of traffic to any prejudice or disadvantage in any respect whatsoever; provided, however, that nothing herein shall be construed to prevent any common carrier from giving preference as to time of shipment of live stock, uncured meats or other perishable property. All common carriers subject to the provisions of this act, shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and switching of cars, and the receiving, forwarding and delivering of passengers and property to and from their several lines, and to and from other lines and places connected therewith; and shall not discriminate in their accommodations, rates and charges between such connecting lines. And any common carrier may be required to switch and transfer cars for another for the purpose of being loaded or unloaded, upon such terms and conditions as may be prescribed by the board of railroad commissioners.

181. Short and long haul. [Ch. 110, '97.] § 8. It shall be unlawful for any common carrier, subject to the provisions of this act, to charge or receive any greater compensation in the aggregate for the transportation of passengers or of a like kind of property for a shorter than for a longer distance over its railroads, all or any portion of the shorter haul being included within the longer. And said common carrier shall charge no more for transporting freight to and from any point on its railroad than a fair and just rate as compared with the price it charges for the same kind of freight transportation to or from any other point.

182. Pooling unlawful. [Ch. 110, '97.] § 9. It shall be unlawful for any common carrier, subject to the provisions of this act, to enter into any contract, agreement or combination with any other common carrier or carriers for the pooling of freight of different and competing railroads, or divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in case of an agreement for the pooling of freight as aforesaid each day of its continuance shall be deemed a separate offense.

183. Schedule of rates to be posted — copies of contracts filed with commissioners — penalties. [Ch. 110, '97.] § 10. Every common carrier subject to the provisions of this act, shall print and keep for public inspection, schedules showing the rates, fares and charges for the transportation of passengers and property which any such common carrier has established, and which are in force at the time upon its railroads as defined by the first section of this act. The schedules printed as aforesaid, by any such common carrier, shall plainly state the place upon its railroads between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately any terminal charges and any rules or regulations which in any wise change, affect or determine any part of the aggregate of such aforesaid rates, fares and charges. Such schedules shall be plainly printed in large type of at least the size of ordinary pica, and a copy for the use of the public shall be kept in every freight office and passenger station, on such railroad, where it can be conveniently inspected, and such common carrier shall keep a printed notice posted in every such freight office and passenger station indicating where therein such schedule can be found. No advance shall be made in the rates and charges which have been established and published as aforesaid by any common carrier, in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedules then in force, and the time when the increased rates, fares or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept for public inspection. Reduction in such published rates, fares or charges may be made without previous public notice, but whenever any such reduction is made, notice of the same shall immediately be publicly posted and the changes made shall immediately be made public by printing new schedules, or shall immediately be plainly indicated upon the schedules at the time in force and kept for public inspection. And when any such common carrier shall have established and published its rates, fares and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith than is specified in such published schedule of rates, fares and charges as may at the time be in force. Every common carrier subject to the provisions of this act shall file with the board of railroad commissioners of this state, copies of its schedule of rates, fares and charges which have been established and published in compliance with the requirements of this

section, and shall promptly notify said commissioners of all changes made in the same. Every such common carrier shall also file with said commissioners, copies of all contracts, agreements or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes in this state operated by more than one common carrier, and the several common carriers operating such lines or routes have established joint tariffs or rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said commissioners. Such joint rates, fares and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers, when directed by said commissioners, in so far as may in the judgment of the commissioners be deemed practicable; and said commissioners shall from time to time prescribe the measures of publicity which shall be given to such rates, fares and charges, or to such part of them as they may deem it practicable for such common carrier to publish, and the places in which they shall be published; but no common carrier, party to any such joint tariff, shall be liable for the failure of any such common carrier, party thereto, to observe and adhere to the rates, fares and charges thus made and published. If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares and charges, as provided in this section or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus to be issued by any circuit court of the state in the judicial circuit wherein the principal office of said common carrier is situated, or wherein such offense may be committed. And if such common carrier be a foreign corporation, then such writ may be issued by any circuit court in the judicial circuit where such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section, and such writ shall issue in the name of the state of South Dakota at the relation or upon the petition of the said board of railroad commissioners of this state; and failure to comply with its requirements shall be punishable as and for a contempt; and shall make said corporation liable to a penalty of five hundred dollars for each day's failure to comply, and when any such writ of mandamus shall be so applied for by said commissioners, no bond shall be required of them by any court or judge, in which or before whom any such application may be made.

184. Change of schedule or cars for delay unlawful. [Ch. 110, '97.]

§ 11. It shall be unlawful for any common carrier subject to the pro-

visions of this act to enter into any combination, contract or agreement expressed or implied, to prevent by change of time schedules, carriage in different cars, or by other means or devices, the carriage of freight from being continuous from the place of shipment to the place of destination in this state, and no break of bulk, stoppage or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination unless such break, stoppage or interruption was made in good faith for some necessary purpose and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

185. Damages for violating act. [Ch. 110, '97.] § 12. In case any common carrier subject to the provisions of this act, shall do, cause to be done or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful or shall omit to do any act, matter or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby, for the amount of damages sustained in consequence of any such violation of the provisions of this act, if recovered without suit or if recovered by suit such common carriers shall be liable to the person or persons injured thereby for not to exceed twice the amount of damages sustained in consequence of any such violation complained of, together with costs of suit and a reasonable counsel or attorney's fee to be fixed by the court in which the same is heard on appeal or otherwise, which shall be taxed and collected as a part of the costs in the case; provided that in all cases demand in writing on said common carrier shall be made for the money damages sustained before suit is brought for recovery under this section, and that no suit shall be brought until the expiration of thirty days after such demand.

186. Damages, how recovered. [Ch. 110, '97.] § 13. Any person or persons claiming to be damaged by any common carrier, subject to the provisions of this act, may either make complaint to the board of railroad commissioners of this state or may bring suit in his or their own behalf for the recovery of damages for which any such common carrier may be liable under the provisions of this act in any court of this state of competent jurisdiction, but such person or persons shall not have the right to pursue both of said remedies at the same time. In any such action brought for the recovery of damages the court before whom the same shall be pending may compel any director, officer, receiver, trustee or agent of the corporation or company, defendant in such suit, to attend, appear and testify in such case and may compel the production of the books and papers of such corporation or company party to any such suit.

187. Penalty for violation of this law. [Ch. 110, '97.] § 14. Except as otherwise specially provided for in sections twenty-six to thirty-one inclusive, of this act, and unless relieved from the consequences of a violation of the law as provided in section eighteen of this act, any common carrier subject to the provisions of this act; or whenever any such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent or person acting for or employed by such corporations who, alone or with any other corporation, company, person or party shall willfully do, or cause to be done, or shall willingly suffer or permit to be done any act, matter or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter or thing in this act required to be done, or shall cause or willingly suffer to permit any act, matter or thing so directed or required by this act to be done, not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof in any circuit court of this state be subject to a fine of not to exceed five thousand dollars and not less than five hundred dollars for each offense.

188. Commissioners may call for books and papers. [Ch. 110, '97.] § 15. It shall be the duty of, and the board of railroad commissioners of this state shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the said commissioners to perform the duties and carry out the object for which said board was created and which are contemplated by this act; and for the purpose of this act the said commissioners shall have power to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, schedules, contracts, agreements and documents relating to any matter under investigation, and to that end may invoke the aid of any court of this state, in requiring the attendance and testimony of witnesses and the production of books, papers and documents under the provisions of this section. And any court of this state within the jurisdiction of which such inquiry is carried on, shall in case of contumacy, or refusal to obey a subpoena or other proper process issued by said railroad commissioners to any common carrier or person subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said commissioners (and produce books and papers if so ordered) and give evidence touching or in relation to the matter in

question; and any failure to obey such order of the court shall be punished by such court as a contempt thereof.

189. Persons may petition for relief — reparation. [Ch. 110, '97.] § 16. Any person, firm, corporation or association, or any mercantile, agricultural or manufacturing society, or any body politic or municipal organization, complaining of anything done or omitted to be done, by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said commissioners by petition, which shall briefly state the facts, whereupon a statement of the complaint thus made with the damages, if any are alleged, shall be forwarded by the said commissioners to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing within a reasonable time to be specified by the commissioners. If such common carrier shall within the time specified, make reparation for the injury alleged to have been done, or shall correct the wrong complained of, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such common carrier shall not satisfy the complaint, within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of said commissioners to investigate the matters complained of, in such manner and by such means as said commissioners shall deem proper, and said commissioners whenever they have sufficient reason to believe that any common carrier is violating any of the provisions of this act, shall at once institute an inquiry in the same manner and to the same effect as though complaint had been made. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant or petitioners.

190. Report of investigation to be furnished complainants. [Ch. 110, '97.] § 17. Whenever an investigation shall be made by said commissioners after notice as provided by section sixteen of this act, it shall be their duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the commissioners are based, together with its or their recommendations or orders as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such finding so made, shall thereafter in all judicial proceedings be deemed and taken as prima facie evidence as to each and every fact found. All reports of investigations made by said commissioners shall be entered of record and a copy thereof shall be furnished to the party who may have complained, and any other person or persons directly interested, and to any common carrier that may have been complained of.

191. Copy of report, etc., to be furnished common carrier. [Ch. 110, '97.] § 18. If in any case in which an investigation shall be made by said commissioners it shall be made to appear to the satisfaction of the commissioners, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act or of any law cognizable by said commissioners, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of such commissioners forthwith to cause a copy of their report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation or to make reparation for the injury so found to have been done, or both within a reasonable time to be specified by the commissioners; and if within the time specified it shall be made to appear to the commissioners that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done in compliance with the report and notice of the commissioners or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the commissioners and the said common carrier shall thereupon be relieved from further liability for such particular violation of law.

192. Courts may enjoin violators of this law — duty of state's attorney, etc. [Ch. 110, '97.] § 19. Whenever any common carrier as defined in and subject to the provisions of this act shall violate or refuse or neglect to obey any lawful order or requirement of the said board of commissioners, it shall be the duty of said commissioners and lawful for any company or person interested in such order or requirement, to apply in a summary way, by petition to the circuit court in any county of the state in which the common carrier complained of has its principal office, or in any county through which its line of road passes or is operated, or in which the violation or disobedience of such order or requirement may happen, alleging such violation or disobedience as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power if it think fit to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries

as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the report of said commissioners shall be prima facie evidence of the matter therein, or in any order made by them stated; and if it be made to appear to such court on such hearing or on the report of any such person or persons, that the order or requirement of said commissioners drawn in the question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction, or other proper process mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said commissioners and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such courts to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers or agents of the same, or against any owner, lessee, trustee, receiver or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other process, mandatory or otherwise, to pay such sum of money not exceeding for each carrier or person in default the sum of one thousand dollars for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other process, mandatory or otherwise; and such moneys shall, upon the order of the court, be paid into the treasury of the county in which the action was commenced, and one-half thereof shall be transferred by the county treasurer to the state treasury; and the payment thereof may without prejudice to any other mode of recovering the same be enforced by attachment or order, in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court, saving to the commissioners and to any other party or person interested in the right to appeal to the supreme court of the state, under the same regulations now provided by law in relation to appeals to said court as to security for such appeal, except that in no case shall security for such appeal be required when the same is taken by said commissioners; but no appeal to said supreme court shall operate to stay or supersede the order of the court, or the execution of any writ or process thereon; and such court may in every such matter order the payment of such costs and attorney and counsel fees as shall be deemed reasonable. Whenever such petition shall be filed or presented, or be prosecuted by the said commissioners, or by their direction, they may require the

attorney general of the state to prosecute the same, and in such prosecution he shall have the right to have the assistance of the state's attorney of any county in which any such proceedings are instituted; and it is hereby made the duty of any state's attorney to render such assistance; or the said commissioners may employ any other attorney or attorneys to prosecute the same or assist the attorney general of the state in such prosecution; and the costs and expenses on the part of said commissioners of any such prosecution shall be paid out of the appropriations for the expenses of said board of commissioners.

193. Commission to make schedule of charges, etc. [Ch. 110, '97.]

§ 20. The board of railway commissioners of this state are hereby empowered and directed to make for each of the railroad corporations doing business in this state, as soon as practicable, a schedule of reasonable maximum fares and rates of charges for the transportation of passengers, freight and cars on each of said railroads, and said power to make schedules shall include the power of classification of all such freights, and it shall be the duty of said commissioners to make such classification; provided, the maximum compensation per mile for the transportation of any person with ordinary baggage, not exceeding one hundred and fifty pounds, shall not be greater than three cents per mile between points where the distance traversed is entirely within this state, except upon narrow gauge railroads and said commissioners shall for the purpose of making a maximum fare and charges for the transportation of passengers and freight, classify said railroads as far as practicable according to the gross amount of their respective annual earnings per mile within the state for the three years preceding the time of making the classification, and said classification may be changed from time to time as the railroad commissioners may order. Said schedule so made by said commissioners shall in all suits brought against such railroad corporations, wherein is in any way involved the charges of any such railroad corporation for the transportation of passengers and freight or cars or unjust discrimination in relation thereto, be deemed and taken in all courts of this state as prima facie evidence that the rates and passenger fares therein fixed are reasonable and just maximum rates of charges for the transportation of passengers, freight and cars upon the railroads for which such schedules may have been respectively prepared. Said commissioners shall from time to time, and as often as circumstances may require, change and revise said schedules. When any schedule shall have been made or revised as aforesaid, it shall be the duty of said commissioners to cause notice thereof to be published for two successive weeks in two public newspapers published, one in the county of Minnehaha and one in the county of Lawrence in this state, which notice shall state the date of the taking effect of said

schedule, and said schedule shall take effect at the time so stated in such notice, and a printed copy of said revised schedule shall be conspicuously posted by such common carrier in each freight office and passenger depot upon its line or lines. All such schedules, so made, shall be received and held in all such suits as prima facie the schedule of said commissioners without further proof than the production of the schedule desired to be used as evidence, with a certificate of said railroad commissioners, that the same is a true copy of the schedule prepared by them for the railroad company or corporation therein named, and that notice of making the same has been published as required by law; provided, that before finally fixing and deciding what the original maximum rates and fares and classifications shall be, it shall be the duty of the railroad commissioners to publish ten days' notice in two daily papers published one in the county of Minnehaha and one in the county of Lawrence, setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates, fares and classification; and they shall at such time and place and as soon as practicable, afford to any person, firm or corporation, or common carrier who may desire it, an opportunity to make an explanation or showing or to furnish information to said commissioners on the subject of determining and fixing such maximum rates and classification; and in any event the original schedule of rates and classification of freights on all lines of railroads in South Dakota shall be fixed and shall go into effect on the first day of July, eighteen hundred and ninety-seven.

194. Commission must investigate complaints of discrimination, etc. [Ch. 110, '97.] § 21. Whenever any person upon his own behalf, or class of persons similarly situated, or any firm, corporation or association or any mercantile, agricultural or manufacturing society, or any body politic or municipal organization, shall make a complaint to said board of railroad commissioners, that the rate or fares charged or published by any railroad company, or the maximum rates and fares fixed by said commissioners in the schedules of rates and fares made by them under the provisions of section twenty of this act, is unreasonably high or discriminating, it shall be the duty of said commissioners to immediately investigate the matter of such complaint. If such complaint appears to be well founded and not trivial in character, the board shall fix a day for hearing the same and shall notify the railroad company of the time and place of such hearing by mailing a notice properly directed to any division superintendent, general or assistant superintendent, general manager, president or secretary of such company, which notice shall contain the substance of the complaint so made; and the board shall also notify the person or persons complaining, of such time and place.

195. Hearing — evidence — procedure. [Ch. 110, '97.] § 22. Upon such hearing so provided for, the said commissioners shall receive whatever evidence, statements or agreements either party may offer or make pertinent to the matter under investigation; and the burden of proof shall not be held to be upon the person or persons making the complaint, but the commissioners shall add to the showing made at such hearing whatever information they may have, or can secure from any source, whatsoever, and the person or persons complaining shall be entitled to introduce any published schedules of rates and fares of any railroad company, or evidence of rates and fares actually charged by any railroad company, for substantially the same kind of service, whether in this state or any other state; and the lowest rates and fares published or charged by any railroad company for substantially the same kind of service, whether in this state or any other state, shall, at the instance of the person or persons complaining, be accepted as prima facie evidence of a reasonable rate or fares for the services under investigation, and if the railroad company complained of is operating a line of railroad beyond the state of South Dakota, or if it appears that it has a traffic arrangement with any such railroad company, then the commissioners, in determining what is a reasonable rate or fares, shall take into consideration the charge made or rate established by such railroad company, or the company with which it has traffic arrangements for carrying freight and passengers from beyond the state to points within the state, and from within the state to points beyond the state; and if such company be operating a line of railroad beyond the state, they shall take into consideration the rate charged or established for a substantially similar or greater service by such company in any other state in which said railroad company operates a line of railroad.

196. Commissioners shall determine future maximum charges. [Ch. 110, '97.] § 23. After such hearing and investigation the said commissioners shall fix and determine a reasonable maximum charge to be thereafter made by the railroad company or common carriers complained of and the said commissioners shall render their decision in writing; and shall spread the same at length in the record to be kept for that purpose; such decision shall, specifically, set out the sums or rate which the railroad company or common carrier, so complained of, may thereafter charge or receive for the service therein named and including a classification of freight, and the said commissioners shall not be limited in their said decision and the schedule to be contained therein to the specific case or cases complained of, but it shall be extended to all rates and fares between points in this state, and whatever part of the line of railroad of such company or common carrier within this state as may have

been fairly within the scope of such investigation, and any such decision so made and entered on record of said commissioners, including any such schedules and classifications, shall, when duly authenticated be received and held in all suits brought against any such railroad corporation or common carrier wherein is in any way involved the charges of any such corporation or common carrier mentioned in said decisions, in any of the courts of this state, as prima facie evidence that the rates and fares therein fixed are reasonable maximum rates and fares the same as the schedules made by the commissioners as provided in section twenty hereof; and the rates, fares and classifications so established after such hearing and investigation shall from time to time thereafter upon complaint duly made be subject to revision by said commissioners the same as any other rates, fares and classifications.

197. May regulate all proceedings — administer oath, etc. [Ch. 110, '97.] § 24. That the said board of railroad commissioners may in all cases conduct its proceedings, when not otherwise particularly prescribed by law, in such manner and places as will best conduce to the other dispatch of business and to the ends of justice. A majority of the commissioners shall constitute a quorum for the transaction of business, but no commissioner shall participate in any hearing or proceedings in which he has any pecuniary interest. Said commissioners may from time to time make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms and notices and the service thereof, which shall conform as nearly as may be to those in use in courts of this state. Any party may appear before said board of commissioners and be heard in person or by attorney. Every vote and official action of said board of commissioners shall be entered of record and its proceedings be public upon the request of either party or any person interested. Said board of railroad commissioners shall have an official seal, which shall be judicially noticed, and every commissioner shall have the right to administer oaths and affirmations in any proceeding pending before said board.

198. Annual reports required — contents. [Ch. 110, '97.] § 25. The said board of railroad commissioners is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the said commissioners may need information. Such annual reports shall show in detail the amount of the capital stock issued, the amounts paid therefor and the manner of the payment of the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the costs and value of the carrier's property, franchises and equipments

and the actual cost per mile in building the road; the number of employes and the salaries paid each class, the amounts expended for improvements each year, how and where expended and the character of such improvements; the earnings and receipts from each branch of business, and from all sources; the operating and other expenses; the balance of the profit and loss, and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet, and copies of all reports made by any station agent of said railroad corporation in this state to the auditor of said railroad corporation. Such reports shall also contain such information in relation to rates or regulations, concerning fares or freights or agreements, arrangements or contracts with other common carriers as the commissioners may require. Such reports shall also contain such other statistics of the road and of its transportation business for the year ending upon the thirtieth day of June of each year as the commissioners shall require, and all such reports shall be made to said board of railroad commissioners on or before the fifteenth day of September of each year.

199. Violators of act to be punished. [Ch. 110, '97.] § 26. If any railroad corporation or common carrier, subject to the provisions of this act, shall charge, collect, demand or receive more than a fair and reasonable rate of toll or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon its track, or any of the branches thereof, or upon any railroad within this state which it has the right, license or permission to use, operate or control, or shall make any unjust and unreasonable charge prohibited in section five of this act, the same shall be deemed guilty of extortion, and shall be dealt with as hereinafter provided, and if any such railroad corporation (or common carrier) shall be found guilty of any unjust discrimination as defined in section six of this act, upon conviction thereof, shall be dealt with as hereinafter provided.

200. Penalty for failure to make reports. [Ch. 110, '97.] § 27. The board of railroad commissioners is also hereby authorized to require of any and all common carriers, subject to the provisions of this act, such other reports, besides the annual reports hereby required, as in the judgment of said board of commissioners shall be deemed just and reasonable. Such reports shall be in such form and concerning such subjects and be from such sources as the commissioners shall require, except as otherwise provided herein. The time when such report shall be filed shall be fixed by the board of railroad commissioners. Any corporation, company or individual owning or operating a railroad within this state which shall fail, neglect or refuse to make any of the reports provided for herein by the date fixed herein, or that fixed by the board of railroad commissioners, shall be subject to and pay a penalty in the

sum of one hundred dollars for each and every day of delay in making such reports after the date fixed.

201. Penalty for discrimination in charges. [Ch. 110, '97.] § 28. If any such railroad corporation shall charge, collect or receive for the transportation of any passenger or freight of any description upon its railroad for any distance within the state, a greater amount of toll or compensation than is at the same time charged, collected or received for the transportation in the same direction of any passenger or like quantity of freight of the same class over a greater distance of the same railroad; or if it shall charge, collect or receive at any point upon its railroad a higher rate of toll or compensation for receiving, handling or delivering freight of the same class and quantity than it shall at the same time charge, collect or receive for the transportation of any passenger or freight of any description over its railroad, a greater amount as toll or compensation than shall at the same time be charged, collected or received by it for the transportation of any passenger or like quantity of freight of the same class being transported in the same direction over any portion of the same railroad of equal distance; or if it shall charge, collect or receive from any person or persons a higher or greater amount of toll or compensation than it shall at the same time charge, collect or receive from any other person or persons for receiving, handling or delivering freight of the same class and like quantity, at the same point upon its railroad, or if it shall charge, collect or receive from any person or persons for the transportation of any freight upon its railroad, a higher or greater rate of toll or compensation than it shall, at the time, charge, collect or receive from any other person or persons for the transportation of the like quantity of freight of the same class, being transported from the same point in the same direction over equal distances of the same railroad, or if it shall charge, collect or receive from any person or persons for the use and transportation of any railroad car or cars upon its railroad, for any distance, a greater amount of toll or compensation than is at the same time charged, collected or received from any other person or persons, for the use and transportation of any railroad car of the same class or number, for a like purpose, being transported in the same direction, over a greater distance of the same railroad; or if it shall charge, collect or receive from any person or persons, for the use and transportation of any railroad car or cars upon its railroad, a higher or greater compensation in the aggregate, than it shall, at the same time charge, collect or receive from any other person or persons for the use and transportation of any railroad car or cars of the same class for a like purpose, being transported from the same original point, in the same direction, over an

equal distance of the same railroad; all such discriminating rates, charges, collections or receipts whether made directly or by means of any rebate, drawback, or other shift or evasion, shall be deemed and taken against such railroad corporation, as prima facie evidence of the unjust discriminations prohibited by the provisions of this act; and it shall not be deemed a sufficient excuse or justification of such discrimination on the part of said railroad corporation that the railroad station or point at which it shall charge, collect or receive less compensation in the aggregate for the transportation of such passenger or freight or for the use and transportation of such railroad car the greater distance, than for the shorter distance, is a railroad station or point at which there exists competition with any other railroad or means of transportation. This section shall not be construed so as to exclude other evidence tending to show any unjust discrimination in freight and passenger rates. The provisions of this section shall extend and apply to any railroad, the branches thereof, and any road or roads which any railroad corporation has the right, license or permission to use, operate or control wholly or in part within this state; provided, however, that nothing herein contained shall be so construed as to prevent railroad corporations from issuing commutation, excursion or thousand mile tickets; provided, the same are issued alike to all applying therefor.

202. No discrimination — tonnage or loss — concessions, how allowed. [Ch. 110, '97.] § 29. It shall be unlawful for any such common carrier to charge, collect, demand or receive more for transporting a car of freight than it at the same time charges, collects, demands or receives per car for several cars of a like class of freight over the same railroad, for the same distance; in the same direction, or to charge, collect, demand or receive more for transporting a ton of freight than it charges, collects, demands or receives per ton for several tons of freight under a car load of a like class of freight over the same railroad for the same distance, in the same direction, or to charge, collect, demand or receive more for transporting a hundred pounds of freight than it charges, collects, demands or receives per hundred for several hundred pounds of freight, under a ton, of a like class of freight over the same railroad, for the same distance, in the same direction; all such discriminating rates, charges, collections or receipts, whether made directly or by means of any rebate, drawback, or other shift or evasion, shall be deemed and taken against such railroad company as prima facie evidence of the unjust discrimination prohibited by this act; provided, however, that for the protection and development of any new industry within this state, such railroad company may grant concessions or special rates for any agreed number of car loads, but such special rates aforesaid shall first be approved by the board of railroad commissioners, and a copy thereof filed in the office thereof.

203. Penalty for extortion or unjust discrimination for use of cars, etc. [Ch. 110, '97.] § 30. Any such railroad company guilty of extortion or making unjust discrimination as to passenger or freight rates for the use and transportation of railroad cars, or in receiving, handling or delivering freights, shall upon conviction thereof be fined in any sum not less than one thousand dollars nor more than five thousand dollars for the first offense, and for every subsequent offense not less than five thousand dollars nor more than ten thousand dollars, such fine to be imposed in a criminal prosecution by indictment, or shall be subject to the liability prescribed in the next succeeding section to be recovered as therein provided.

204. Penalty for extortion in charges for handling or delivering freight, etc. [Ch. 110, '97.] § 31. Any such railroad corporation guilty of extortion or of making any unjust discrimination as to passenger or freight rates or the rates for the use and transportation of railroad cars, or in receiving, handling or delivering freights, shall forfeit and pay to the state of South Dakota not less than one thousand dollars nor more than five thousand dollars for the first offense and not less than five thousand dollars nor more than ten thousand dollars for every subsequent offense to be recovered in an action by proceedings instituted in the name of the state of South Dakota. And the release from liability or penalty provided for in section eighteen of this act, shall not apply to either a criminal prosecution under the last preceding section or a civil action brought under this section.

205. Commissioners to institute suits for penalties. [Ch. 110, '97.] § 32. Whenever said railroad commissioners have good reason to believe that any railroad corporation or common carrier subject to the provisions of this act has been guilty of extortion or unjust discrimination and thereby become liable to the penalties prescribed in sections thirty and thirty-one hereof, it shall be their duty to immediately cause suits to be commenced and prosecuted against any such railroad corporation or common carrier. Such suits and prosecutions may be instituted in any county of this state through or into which the line of the railroad corporation sued for violation of this act may extend. No such suits commenced by said commissioners shall be dismissed unless the said commissioners shall consent thereto, and the court may in its discretion give preference to such suits over all other business except criminal cases.

206. Exemptions allowed in certain cases. [Ch. 110, '97.] § 33. Nothing in this act shall apply to the carriage, storage or handling of property free or at reduced rates for the United States or this state or municipal governments for charitable purposes, or to and from fairs

and expositions for exhibition thereat or for the employes of such common carriers or their families or private property or goods for the family use of the employes of such common carriers, or the issuance of mileage, excursion or commutation passenger tickets. Nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to prevent railroads from giving free carriage to their own officers and employes and their families dependent upon said officer or employe for support and to persons in charge of live stock being shipped from the point of shipment to destination and return, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employes; and nothing in this act contained, shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies; provided, that no pending litigation shall in any way be affected by this act.

207. Free transportation for commissioners. [Ch. 110, '97.] § 34. The railroad commissioners and their secretary shall have the right of free transportation in the performance of their duties concerning railroads, on all railroads and railroad trains in this state, and they may take with them experts or other agents whose services they may require and who shall in like manner be transported free of charge.

208. Construction of act as to joint rates. [Ch. 110, '97.] § 35. This act shall not be construed to prohibit the making of rates of two or more railroad companies for the transportation of property over two or more of their respective lines of railroad within this state, and a less charge by each of said railroad companies for its portion of such joint shipment than it charges for a shipment for the same distance wholly over its own lines within the state, shall not be considered a violation of this act, and shall not render such railroad company liable to any of the penalties of this act, but the provisions of this section shall not be construed to permit railroad companies establishing joint rates, to make by such joint rates any unjust discrimination between the different shipping points or stations upon their respective lines between which joint rates are established, and any such unjust discrimination shall be punished in the manner and by the penalties provided by this act.

209. Regulations as to joint through rates. [Ch. 110, '97.] § 36. All railroad companies doing business in this state shall upon the demand of any person or persons interested, establish reasonable joint through rates for the transportation of freight between points upon their respective lines within this state, and shall receive and transport freight and cars over such route or routes as the shipper shall direct. Carload

lots shall be transferred without unloading from the cars in which shipments were first made, unless such unloading in other cars shall be done without charge therefor to the shipper or receiver of such carload lots, and such transfer be made without unreasonable delay, and less than carload lots shall be transferred into the connecting railroad's cars at cost, which shall be included in and made a part of the joint rate adopted by such railroad companies or established as provided by this act. When shipments of freight to be transported between different points within this state are required to be carried by two or more railroad companies operating connecting lines, such railroad companies shall transport the same at reasonable through rates and shall at all times give the same facilities and accommodations to local or state traffic as they give to interstate traffic over their lines of road.

210. Commissioners may establish joint rates. [Ch. 110, '97.] § 37. In the event that said railroad companies shall fail to establish through joint rates or fail to establish and charge reasonable rates for such through shipments, it shall be the duty of the board of railroad commissioners, and they are hereby directed upon the application of any person or persons interested, to establish reasonable joint rates for the shipment for like distances. The rates established by the board of railroad in this state, and in the making of such rates and in changing or revising the same, they shall be governed as near as may be, by all the provisions of this act and shall take into consideration the average of rates charged by said railroad companies for shipments within this state, for like distances over their respective lines, and rates charged by the railroad companies operating such connecting lines for joint interstate shipment for like distances. The rates established by the board of railroad commissioners shall go into effect within ten days after the same are promulgated by said board; and from and after that time the schedule of rates shall be prima facie evidence in all of the courts of this state that the joint rates therein fixed are reasonable and just maximum rates for the transportation of freight and cars upon the railroad for which such schedules have been fixed.

211. Notice to be given. [Ch. 110, '97.] § 38. Before the promulgation of such rates as provided in section thirty-seven of this act, the board of railroad commissioners shall notify the railroad companies interested in the schedule of joint rates fixed by them, and they shall give said railroad companies a reasonable time thereafter to agree upon a division of the charges provided for in such schedule, and in the event of the failures of said railroad companies to agree upon a division and to notify the board of such agreement, the board of railroad commissioners shall after a hearing of the companies interested, decide the same, taking into consideration the value of terminal facilities and all the cir-

cumstances of the haul, and the division so determined by the board shall, in all controversies or suits between railroad companies interested, be prima facie evidence of a just and reasonable division of such charges.

212. Platform and station house at crossings to be maintained. [Ch. 110, '97.] § 39. All railroad corporations shall at all points of connection, crossing or intersection with the roads of other corporations unite with such corporations in establishing and maintaining suitable platforms and station houses for the convenience of passengers, desiring to transfer from one road to [an] other, and for the transfer of passengers, baggage or freight, whenever the same shall be ordered by the railroad commission; and such corporation shall, when so ordered by the railroad commission, keep such depot or passenger house warmed, lighted and open to the ingress and egress of all passengers a reasonable time before the arrival and until after the departure of all trains carrying passengers on said railroad or railroads; and said railroad companies so connecting, crossing or intersecting, shall stop all trains at said depot at said connections, crossings or intersections, for the transfer of passengers, baggage and freight when so ordered by the railroad commission, and the expense of constructing and maintaining such station house and platform shall be paid by such corporations in such proportions as may be fixed by the order of the railroad commission. Such corporations connecting by intersection as aforesaid, shall also, whenever ordered by the railroad commission, so unite and connect the tracks of said several corporations as to permit the transfer from the track of one corporation to the other of loaded or unloaded cars designed for transportation upon both roads.

213. Neglect to comply with acts — penalty. [Ch. 110, '97.] § 40. Any railroad corporation or company which, after having received ninety days' notice by the railroad commissioners, shall neglect or refuse to comply with the provisions of section thirty-nine of this act, shall, for every day such corporation or company fails, neglects or refuses to comply therewith, forfeit and pay the sum of twenty-five dollars, which may be recovered in the name of the state of South Dakota, for the use of the school fund of the county wherein such crossing or intersection is situated; and it shall be the duty of the state's attorney of the proper county to prosecute for and recover the same.

214. Duty of attorney general and state's attorney. [Ch. 110, '97.] § 41. The attorney general of the state of South Dakota shall at all times when requested, give the railroad commissioners such counsel and advice as they may from time to time require, and it is hereby made his duty to institute and prosecute whenever requested by the railroad commissioners, any and all suits which said railroad commissioners may

deem it expedient and proper to institute, and he shall render to such railroad commissioners all counsel, advice and opinions in writing, when requested, as are necessary to carry out the provisions of this act, or of any law of this state, according to the true intent and meaning thereof. It shall likewise be the duty of the state's attorney of any county in which suit is instituted or prosecuted, to aid in the prosecution of the same to a final issue upon the request of such commission. Said commissioners are hereby also authorized, when in their opinion it is necessary or proper, to employ any and all additional legal counsel to assist them in the discharge of their duties and to conduct and prosecute any and all suits they may determine to bring under the provisions of this act or any law of this state, or to assist the attorney general in the prosecution of the same.

215. Additional penalty for refusal to comply with act. [Ch. 110, '97.]

§ 42. In addition to any penalty imposed or remedy provided in this chapter, it is further provided, that if any railroad corporation shall willfully continue to neglect or refuse to comply with the provisions of this act or with any reasonable order or regulation of the board of railroad commissioners such neglect or refusal shall cause a forfeiture of the franchises of said corporation, if the same be a domestic corporation, and if the same be a foreign corporation, such neglect or refusal shall cause a forfeiture of all right and privilege to transact its business within this state.

216. Forfeit of franchise. [Ch. 110, '97.] § 43. It is hereby made the duty of the attorney general of the state of South Dakota to commence an action in any court of this state of competent jurisdiction, against any railroad corporation, for the purpose of having its corporate franchise forfeited or for the purpose of having it perpetually enjoined from transacting any business within this state, whenever the board of railroad commissioners shall report to said attorney general that any railroad corporation has violated the provisions of section forty-two of this act.

217. Commissioners punished for neglect of duties. [Ch. 110, '97.]

§ 44. If any railroad commissioner shall willfully neglect or refuse to perform the duties imposed upon him in this act he shall be deemed guilty of a misdemeanor, and in addition to the punishment provided by law, such railroad commissioner shall upon conviction, forfeit his office.

CROSSINGS.

218. Petition — how served. [Ch. 156, '95.] § 1. Whenever five (5) electors, residents upon a traveled highway upon any section line in this

state over or across which any railroad company may have a track or operate a line of railroad, shall petition such company to construct a crossing where its line of railroad crosses said highway, it shall be the duty of such railroad company within thirty days from the receipt of such petition to construct and build a good and sufficient crossing for the accommodation of the public, where its line of railroad crosses said highway. Service of said petition or a copy thereof upon any agent of said company within this state shall be deemed, for the purposes of this act, to be service upon such company.

219. Refusal to construct — duty of county commissioners — notice of hearing. [Ch. 156, '95.] § 2. If any railroad company owning or operating lines of railroad in the state of South Dakota, shall refuse, neglect or fail for the period of thirty days from the date of the receipt of the petition provided for in section one of this act, to construct a good and sufficient crossing where its line of railroad crosses such highway, it shall be the duty of the county commissioners of the county in which said crossing is situated, upon being notified of such refusal, to serve ten (10) days' notice upon said railway company of the time and place, when and where it shall appear before said county commissioners and show cause if any it have, why it should not be compelled to construct such crossing. A notice shall also be served stating the time and place of such hearing and investigation, upon the party or parties making complaint of such refusal on the part of said railroad company.

220. County commissioners to determine. [Ch. 156, '95.] § 3. At the time and place specified in such notice the county commissioners shall hear the complaining party or parties, and the railroad company respectively, and shall determine whether the public welfare and convenience demand the construction of such crossing. And in arriving at such conclusion, it shall be the duty of the county commissioners to take into consideration the cost of constructing such crossing and the advantage or convenience its construction would be to the persons living adjacent to said railroad and those who would use said crossing in case the same was constructed, and if the cost of constructing said crossing would be large, and the number of persons whom it would serve would be small, it shall be their duty to refuse to order the same constructed.

221. County commissioners may order construction of crossing. [Ch. 156, '95.] § 4. If upon such hearing and after full investigation and consideration of all the circumstances surrounding the matter, the county commissioners conclude that the public welfare and convenience demand the construction of such crossing, an order directing the construction of such crossing signed by the chairman of the board of county

commissioners and attested by the county auditor, shall be served upon said railroad company. If said railroad company shall refuse or neglect to construct such crossing with proper approaches for a period of thirty (30) days after the service of said order, then the county commissioners may proceed to construct such crossing with its approaches, and shall be entitled to recover the amount necessarily expended in the construction of such crossing and its approaches, together with all costs, in the name of the county in which such crossing is located. The action to recover the amount thus expended shall be commenced in the circuit court and shall be prosecuted by the state's attorney of such county.

222. Time for constructing crossing. [Ch. 156, '95.] § 5. In case the order directing the construction of such crossing shall be made within the first day of November and the thirty-first day of March of the following year, said railroad company shall have thirty (30) days after the thirty-first day of March next following the making of such order in which to construct said crossing.

CONNECTIONS.

223. May order railroad companies to make connections at junction points. [Ch. 137, '93.] § 1. It shall be the duty of the railroad commissioners to order all railroad companies in this state to make connections with their passenger trains, where the same can be reasonably done, with other railroads at junction points; but before making such order they shall give thirty days' notice in writing to a station agent of the companies interested, at such junction, of the time and place, when and where such companies may be heard in opposition to the making of such order.

224. Penalty for failure to comply. [Ch. 137, '93.] § 2. Whenever such an order is made and written notice thereof served on the station agent of the company or companies affected, at the place where connection is ordered, it shall be the duty of such companies to comply therewith, and a failure so to do for thirty days after such service, shall subject the offending company to a penalty of one hundred dollars, and an additional penalty of one hundred dollars per day for every day in addition to said thirty days, which penalties may be recovered in an action by any person in the name of the state, and when so recovered one-half shall go to the prosecution and the remainder to the school fund of the county where the prosecution is had.

TRANSPORTATION OF FUEL.

225. Transportation of fuel. Any railroad company doing business in this state, when desired by any person wishing to ship coal or other fuel over its road, shall receive and transport such coal or other fuel in bulk, within a reasonable time, and permit the same to be loaded either on its track near the depot or at any warehouse or side-track without any distinction, discrimination or favor between one shipper and another, and without discrimination or distinction as to the manner in which such coal or other fuel is offered for transportation, or as to the person, warehouse or place, where or to which it may be consigned. Every railroad company shall permit connections to be made and maintained in a reasonable manner with its track to and from any coal mine adjacent to or near any station or side track on its line; *provided, however*, that such railroad company shall not be required to pay the cost of making or maintaining said connections or of the siding or switch-track necessary to make the same; and, *provided, further*, that a majority of the railroad commissioners shall direct such railroad to make such connections and siding. [C. L. 153.]

226. No discrimination. No railroad corporation shall charge, demand or receive from any person, company or corporation, for the transportation of coal or other fuel, a greater sum than it shall at the same time charge, demand or receive from any other person, company or corporation for a like service from the same place; and all concessions of rates, rebates, drawbacks and contracts for special rates, shall be open to and allowed to all persons, companies and corporations, and they shall charge no more for transporting from any point on its line than a fair and just proportion of the price it charges for the same kind of freight transported from any other point within the state. [C. L. 154.]

227. Railroad commissioners act to apply. All the provisions of an act entitled "an act to provide for the establishment of a board of railroad commissioners, defining their duties and to regulate the receiving and transportation of freight on railroads in this state" [sections 137 to 152], shall apply to the receiving and shipments of coal and other fuel so far as the same is applicable; and it shall be the duty of the railroad commissioners to enforce the provisions of this act. [C. L. 155.]

GRAIN WAREHOUSES.

228. Duties — railroad commissioners. [Ch. 99, '90.] § 1. That the duties imposed by the provisions of this act and the powers conferred therein devolve upon the board of railroad commissioners.

229. Duties and powers. [Ch. 99, '90.] § 2. That it shall be the duty of the railroad commissioners of the state of South Dakota to supervise the handling, inspection, weighing, grading and storage of grain and seeds; to establish all necessary rules and regulations for the weighing and inspection of grain, and for the management of the public warehouses of the state, as far as such rules and regulations may be necessary to enforce the provisions of this act, or any law of this state, in regard to the same; to investigate all complaints of fraud or oppression in the grain trade of this state, and to correct the same as far as it may be in their power.

230. Printing and publishing of rules. [Ch. 99, '90.] § 3. The rules and regulations, so established, shall be printed and published by said railroad commissioners in such manner as to give the greatest publicity thereto and the same shall be in force and effect until they shall have been changed or abrogated by said commissioners in a like public manner.

231. Public warehouses. [Ch. 99, '90.] § 4. That all elevators and warehouses in this state wherein and whereat grain is purchased, received or handled are hereby declared to be public warehouses.

232. License. [Ch. 99, '90.] § 5. That it shall not be lawful for the proprietor, lessee or manager of any warehouse or elevator, mention [ed] in section four of this act, to transact any business until a license has been procured from the railroad commissioners permitting such proprietor, lessee or manager to transact business as a public warehouseman under the laws of this state, which license shall be issued by the railroad commissioners upon a written application, which shall set forth the location and name and capacity of such elevator or warehouse and the individual name of each person interested as owner or principal in the management of the same; or if the elevator or warehouse be owned or managed by a corporation, the name of the president, secretary and treasurer of such corporation shall be stated, and the said license shall give authority to carry on and conduct the business of a public warehouse, in accordance with the laws of this state; *provided*, that it shall be unlawful for any warehouseman, company or corporation engaged in purchase and storage of grain, subject to the provisions of this act, to enter into any contract, agreement or combination with any other warehouse, company or corporation for pooling in the purchase and storage of grain by different and competing warehousemen, companies or corporations to divide between them the aggregate or net proceeds of margins or profits resulting from their said business as warehousemen, or any portion thereof, and in any case of such contract, agreement or combination for such pooling of their said business as warehousemen, each day of its continuance shall be deemed a separate offense.

233. Bond. [Ch. 99, '90.] § 6. That the proprietor, lessee or manager of any warehouse or elevator in this state in which grain is stored for a compensation, shall before receiving the license as hereinbefore provided, file with the commissioners granting the same a bond to the state of South Dakota, with good and sufficient sureties, in the penal sum of not less than two thousand dollars nor more than fifty thousand dollars, for each and every elevator operated, proportioned to the capacity of the elevators or warehouses, in the discretion of said commissioners, for each license so granted, conditioned for the faithful performance of duty as a public warehouseman and a full and unreserved compliance with all the laws of this state in relation thereto. A fee of one dollar shall be paid for each license by the person, association, or corporation applying for the same.

234. Penalty for transacting business without license. [Ch. 99, '90.] § 7. That any person, association or corporation who shall transact the business of public warehouseman, without first procuring a license as herein provided, shall be deemed guilty of a misdemeanor and on conviction, shall be fined a sum not less than one hundred dollars for each and every day such business has been carried on. Every such license shall expire on the first day of August next following the issuance thereof, and the said board of railroad commissioners may at any time for good cause shown, in their discretion revoke any warehouseman's license by them granted, but the said warehouseman shall have the right of appeal from said decision to the circuit court in and for the county in which his warehouse is located, upon filing a bond in the sum of two hundred dollars, conditioned for the payment of the costs of said appeal provided the same is not sustained by said court.

235. Warehouse receipts. [Ch. 99, '90.] § 8. All owners of such bonded warehouses and elevators so licensed shall upon the request of any person delivering grain at such warehouse give a warehouse receipt therefor, subject to the owner or consignee, which receipt shall bear date corresponding with the receipt of the grain and shall state upon its face the quality and grade fixed upon the same; also the amount deducted for dirt or cleaning. All warehouse receipts issued for grain received shall be consecutively numbered, and no two receipts bearing the same number and series shall be issued during the same year. No warehouse receipt shall be issued except upon actual delivery of grain into such warehouse. No such warehouseman shall insert into any warehouse receipt issued by him any language in anywise limiting or modifying his liability as imposed by the laws of this state.

236. Grain to be delivered upon the return of the receipt. [Ch. 99, '90.] § 9. On the return of any warehouse receipt properly indorsed, and the tender of all proper charges upon the property represented by it,

such grain, or any equal quality of the same grade, shall be immediately delivered to the holder of such receipt as rapidly as due diligence, care and prudence, will justify. Nothing in this section shall be construed to mean the delivery of the identical grain specified in the receipt so presented; but an equal amount of the same grade, and if the grain so delivered has not been cleaned by said warehousemen, there shall be added to the amount so delivered the amount originally deducted from the grain stored for dirt, which amount shall also be delivered; and when such grain is to be shipped to some terminal point where such elevator company or warehouseman is there doing business, such elevator company or warehouseman shall guarantee both weight and grade.

237. Report to railroad commissioners. [Ch. 99, '90.] § 10. That every owner or manager of such licensed warehouse or elevator, at such times as the commissioners shall require, shall furnish to the commissioners in writing, under oath, a statement of the condition and management of his business as such warehouseman. Such report shall show the total number of bushels of each kind and grade of grain purchased and in store, and the number delivered out, and the number remaining in store at the date of the report. But no warehouseman shall be required to weigh the grain on hand more than once in each year; and the warehouseman shall, in addition to the statement herein, be required to furnish to the commissioners any other information regarding the business of his warehouse which the commissioners may require.

238. Inspection of warehouses. [Ch. 99, '90.] § 11. The commissioners shall cause every warehouse and the business thereof, and the mode of conducting the same to be inspected, at such times as the commissioners may order, by one or more members of the commission, who shall report in writing to the commissioners the result of such examination; and the property, books, records, accounts, papers and proceedings, kept at each warehouse, so far as they relate to their condition, operation, or management, shall at all times during business hours be subject to the examination and inspection of such commissioners; and said board of commissioners may, in all matters arising under the provisions of this law, exercise the power to subpoena and examine witnesses conferred upon said board by law in relation to railroad companies.

239. Grades to be established. [Ch. 99, '90.] § 12. The railroad commissioners shall, before the first day of September in each year, establish a grade for all kinds of grain bought or handled by any elevator or warehouse in this state, which shall be known as "South Dakota grades," but which shall not differ from grades in the state of Minnesota, and the grades so established shall be printed and published in the manner

required by section five of this act: *Provided*, that no such publication shall be necessary except when changes are made in such grades, and when [then] the changes so made only shall be published. And said board of railroad commissioners shall have supervision of the grading, weighing and shipping of all grain purchased or handled by public warehousemen in South Dakota; and all public warehousemen shall grade all grain purchased or handled by them in conformity with the established "South Dakota grades," as herein provided. Any person aggrieved at the weights or grades given by any warehouseman may appeal to the board of railroad commissioners, and it is hereby made the duty of said board to, without delay, inquire into said grievance and adjust the same in accordance with established standards.

240. Moneys to be paid into state treasury. [Ch. 99, '90.] § 13. All moneys collected by the railroad commissioners, as herein provided for, shall be paid into the state treasury.

241. Duty of state treasurer. [Ch. 99, '90.] § 14. It shall be the duty of the treasurer of the state of South Dakota to receive all moneys aforesaid and all fines and penalties collected by virtue of this act, and to keep a separate account of the same, and pay the same only on the order of the railroad commissioners to defray the expense of carrying the provisions of this act into effect.

242. Bailment, not a sale—insolvency. [Ch. 99, '90.] § 16. Whenever any grain shall be delivered to any person, association, firm or corporation, doing a grain warehouse or grain elevator business in this state, and receipts issued therefor, providing for a delivery of a like kind, amount and grade, to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so delivered; and in no case shall the grain so stored be liable to seizure upon process of any court in actions against such bailee, except actions by owners or holders of such warehouse receipts to enforce the terms of the same; but such grain shall at any and all times, in the event of the failure or insolvency of such bailee, be first applied exclusively to the redemption of outstanding warehouse receipts for grain so stored with such bailee. And in such event grain on hand in any particular elevator or warehouse shall first be applied to the redemption and satisfaction of receipts issued from such warehouse.

243. Denial of storage not permissible. [Ch. 99, '90.] § 17. No person, association, firm or corporation, doing a grain warehouse, or grain elevator business in this state, having issued a receipt for the storage of grain, as in section one of this act provided, shall thereafter be permitted to deny that the grain represented thereby is the property of the person

to whom such receipt was issued, or his assigns thereof, and such receipts shall be deemed and held, so far as the duties, liabilities and obligations of such bailee are concerned, conclusive evidence of the fact that the party to whom the same was issued or his assigns thereof, is the owner of such grain, and is the person entitled to make surrender of such receipt and receive the grain thereby promised to be delivered.

244. Larceny — punishment. [Ch. 99, '90.] § 18. Every person, and every member of any association, firm or corporation doing a grain warehouse or grain elevator business in this state who shall after demand, tender and offer as provided in section nine of this act, willfully neglect or refuse to deliver, as provided by said section nine, to the person making such demand, the full amount of grain of the kind and grade or market value thereof which such person is entitled to demand of such bailee, shall be deemed guilty of larceny and shall on conviction thereof be punished by a fine or imprisonment, or both, as is prescribed by law for the punishment of larceny.

245. Receipts. [Ch. 99, '90.] § 19. Upon the delivery of grain from store upon any receipt, such receipt shall be plainly marked across its face the word "canceled" and shall thereafter be void, and shall not again be put in circulation, nor shall grain be delivered twice upon the same receipt. No warehouse receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued, and which is to be represented by the receipts, nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel stated to have been received. Nor shall more than one receipt be issued for the same lot of grain, except in cases where receipt for part of a lot is desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of store and the remainder is left, a new receipt may be issued for such remainder, but the new receipt shall bear the same date as the original and shall state on the face that it is balance of receipt of the original number, and the receipt upon which a part has been delivered shall be cancelled in the same manner as if it had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consents thereto, the original receipt shall be cancelled the same as if the grain had been delivered from store, and the new receipts shall express on their face that they are a part of another receipt, or a consolidation of other receipts, as the case may be; and the numbers of the original receipts shall also appear upon the new ones issued, as explanatory of the change; but no consolidation of receipts of dates differing more than

ten (10) days shall be permitted, and all new receipts issued for old ones cancelled, as herein provided, shall bear the same date as those originally issued as near as may be.

246. Schedule of rates to be published. [Ch. 99, '90.] § 20. Every warehouseman of bonded warehouses shall be required during the first week in September of each year to publish in one of the newspapers, daily if there be such, published in the city or village in which said warehouse is situated, a table or schedule of rates for the storage of grain in his warehouse during the ensuing year, which rates shall not be increased during the year, and he shall cause the same to be plainly printed on the warehouse receipts or tickets, and such published rates, or any published reduction of them shall apply to all grain received into such warehouse from any person or source. The charges for storage and handling shall in all cases be equal and just, and shall be approved by the board of railroad commissioners before going into effect and shall not exceed the usual charges heretofore existing.

247. Attorney general — state's attorney. [Ch. 99, '90.] § 21. The attorney general of the state shall be ex-officio attorney for the railroad commissioners and shall give them such counsel and advice as they may from time to time require, and he shall institute and prosecute any and all suits which said railroad commissioners may deem expedient and proper to institute, and he shall render to such railroad commissioners all counsel, advice and assistance necessary to carry out the provisions of this act or any law which said commissioners are required to enforce according to the true intent and meaning thereof. In all criminal prosecutions against a warehouseman for the violation of any of the provisions of this act it shall be the duty of the state's attorney of the county in which such prosecution is brought to prosecute the same to a final issue.

248. Official bonds to be filed with state auditor. [Ch. 99, '90.] § 22. All official bonds required to be given by any person, company or corporation, pursuant to the provisions of this act, shall be filed in the office of the auditor of the state of South Dakota, and suit may be brought thereon in any court having jurisdiction thereof, for the use of any person or persons complaining of having sustained any injury by reason of a violation of the conditions thereof.

249. Certain combinations unlawful — posting of rules. [Ch. 99, '90.] § 23. It shall be unlawful for any proprietor, lessee or manager of any public warehouse to enter into any contract, agreement, understanding or combination with any railroad company, or any corporation, or with any individual or individuals by which the property of any person is to be delivered to any public warehouse for storage or for any other

purpose, contrary to the direction of the owner, his agent or consignee. Each warehouseman shall also keep posted at all times in a conspicuous place in his warehouse a printed copy of the schedule of grades established by the commissioners and a printed copy of this act, and of the rules and regulations for the management of warehouses established by the commissioners, to be furnished by the railroad commissioners.

250. Penalty for violation of the provisions of this act. [Ch. 99, '90.]

§ 24. That any person, association or corporation, or any representative thereof, who shall knowingly cheat or falsely weigh any wheat or other agricultural products or who shall violate the provisions of any section of this act, or who shall do or perform any act or thing therein forbidden, or who shall fail to do and keep the requirements as herein provided, shall be deemed guilty of a misdemeanor and shall on conviction thereof be subjected to a fine of not less [than] one hundred dollars, nor more than one thousand dollars, and be liable in addition thereto to imprisonment for not more than one year in the state prison at the discretion of the court.

251. Test of scales — standard weights and measures. [Ch. 99, '90.]

§ 25. Said board of commissioners or any one or more members thereof may, at any time, without notice, enter any public warehouse in this state and test and seal all weighing scales and measures used in conducting said warehouse business, and for that purpose the said commission is hereby authorized to provide itself with standard weights and measures.

252. Producers not bound under the provisions of this act. [Ch. 99, '90.]

§ 26. Nothing in this act shall be so construed as to prevent the producers from marketing, storing or shipping their own products in any manner they choose, without procuring any license or giving any bonds under any provisions of this act.

SIDE TRACKS.

253. Side tracks. [Ch. 125, '99.] § 1. Every railroad company doing business or operating a line of railroad in this state, shall upon application in writing made by any person, firm or corporation owning or operating an elevator, warehouse or flouring mill, or a manufactory, upon or immediately contiguous to its right of way, at any of its regular stations, provide suitable side track facilities and running connections between its main track and such elevator, warehouse, flouring mill or manufactory, within twenty days after such application in writing shall be served upon any station agent of such company in the county wherein such side track and running connections is desired, and such side track facilities and running connections shall be made by such railroad company without reference to the size, cost or capacity of such elevator, warehouse or flouring mill; but such railroad company shall not be required to furnish any side tracks except upon its own land, or beyond the right of way over which it is operating its line

of railroad; provided that such side track need not be furnished when the capacity of any elevator is less than 10,000 bushels, unless so ordered by the board of railroad commissioners. Provided further, that any person wishing to avail himself of the benefits of this act shall so notify the railroad company before building such elevator, and the railroad company shall have the privilege of granting him a site on the side tracks of the railroad company already constructed.

254. Restrictions. [Ch. 125, '99.] § 2. That no elevator, warehouse, flouring mill or manufactory shall be constructed within one hundred (100) feet of any existing structure, and shall be at a safe fire distance from all station buildings, and so as not to conflict with the safe and convenient operation of such railroad.

255. For shippers. [Ch. 125, '99.] § 3. Where stations are more than twelve miles apart such railroad company, when required so to do by the board of railroad commissioners, shall construct and maintain a side track for the use of shippers between such stations.

256. Penalty. [Ch. 125, '99.] § 4. A failure or refusal on the part of such railroad company to construct side tracks and running connections as provided in sections one and three of this act, shall render it liable to the applicant for same for all damages he may sustain by reason of such failure and refusal; and such railroad company shall forfeit not less than one hundred dollars nor more than three hundred dollars for each day it shall fail or refuse to comply with the provisions of said sections one and three of this act as to the construction of such side tracks and running connections; and it shall be the duty of the state's attorney of the county where such failure occurs, to prosecute in the name of the state all actions for the recovery of such forfeitures, and when recovered the same shall be paid into the school fund of the county.

WAREHOUSE SITES.

257. Duty of railway commissioners. [Ch. 185, '95.] § 1. Whenever any person, firm or corporation shall have been refused the privilege of constructing a public warehouse upon the right of way, depot grounds or warehouse lots of any railway at any station thereon in the state of South Dakota, it shall be the duty of the board of railway commissioners to immediately, upon being notified of such refusal, to serve ten days' notice upon said railway company at the time of the investigation hereinafter provided for and then at the time so appointed appear at the station where such public warehouse site is desired and upon investigation and consideration of all the circumstances surrounding the case, determine whether the public welfare will be advanced by the construction of another warehouse at such station.

258. Decision of the board to be final, when. [Ch. 185, '95.] § 2. If the said board of railway commissioners shall after such consideration determine that the public welfare would not be advanced by the construction of another warehouse at said station, the said board shall

so inform the applicant for said site and such determination shall be final and no further procedure shall be had in the premises.

259. Board to fix location. [Ch. 185, '95.] § 3. If the said board of railway commissioners shall determine after due investigation that the construction of such warehouse is necessary and that the public welfare will be advanced thereby, then it shall be the duty of said board to fix the location of such public warehouse upon the right of way, depot grounds or warehouse lots of the railway company concerned, having in view in fixing such location the interests and convenience of said railway company and of the public, and a memorandum of such determination and of the location so selected shall be furnished to the applicant for such public warehouse site.

260. Compensation for property. [Ch. 185, '95.] § 4. In all cases where persons or firms invested with the privilege of taking private property for public use under this act shall determine to exercise such privilege, it shall be the duty of such person or firm to file a petition in the circuit court of the county in which the property to be taken is situated, praying that a just compensation to be made for such property may be ascertained by a jury.

261. Petition to contain what. [Ch. 185, '95.] § 5. Such petition shall name the person or firm desiring to take such private property for public use as plaintiff, and the railway owning such property as defendant. It shall contain a description of the property to be taken and the purpose for which the same is to be so taken shall be clearly set forth in the petition. Such petition shall be verified in the manner provided by law for the verification of complaints in the circuit court, and the affidavit of verification shall contain the further statement that the proceeding is in good faith and for the purposes specified in the petition.

262. Amendments to petition [Ch. 185, '95.] § 6. If any person or corporation who are proper parties defendant to such proceeding, or any property affected thereby, shall have been omitted from said petition or notice, the plaintiff may file amendments to the same, which amendments from the filing thereof shall have the same effect as though contained in said petition or notice.

263. Plaintiff's motion for action. [Ch. 185, '95.] § 7. At any time after filing the petition the plaintiff may issue a summons to the defendant or defendants which shall be entitled in the action or proceeding, and state the time and place of filing the petition, the nature of the proceeding, and contain a notice to the effect that if the defendant or defendants do not appear in said proceeding within twenty days from the service thereof, exclusive of the day of service, the plaintiff will apply to the court for an order to empanel a jury and ascertain the just compensation for the property proposed to be taken in such proceeding.

264. Application for drawing of jurors. [Ch. 185, '95.] § 8. If no appearance be made in said proceeding by the defendant or defendants

within the time specified in the summons the plaintiff upon affidavit of the default may apply to the court for an order directing the clerk of the court to draw and summon eighteen jurors to attend at the court house or place of holding the circuit court of the county to be specified in such order. Said jurors shall be drawn and summoned in the same manner as jurors are drawn and summoned for the regular or special term of the circuit court. If any of the defendants shall have appeared in such proceeding the plaintiff shall give such defendants three days' notice of the time and place where application shall be made to the court for the order to draw and summon the jurors.

265. Trial of action. [Ch. 185, '95.] § 9. At the time and place specified in the order mentioned in section eight a special term of the court shall be held, at which the proceedings in empaneling a jury, trial, and rendering of the verdict or verdicts shall be conducted in the same manner as trials of actions in the circuit court.

266. Pleadings. [Ch. 185, '95.] § 10. No other pleadings shall be necessary in such proceeding except the petition of the plaintiff, and such as may become necessary to enable the court to determine conflicting claims of the defendants to the compensation awarded by the verdict of the jury or some part thereof.

267. Jury may view premises, when. [Ch. 185, '95.] § 11. Upon the demand of any party to the proceeding, if the court shall deem it necessary, the jury may view the premises under the rules of law for viewing by the jury.

268. Issue or question to be tried — limited to what. [Ch. 185, '95.] § 12. The only issue or question which shall be tried by the jury upon the petition shall be the question of compensation to be paid for the property so taken, but in case there shall be adverse claimants for such compensation for any part of such property, the court may require such adverse claimants to interplead, so as to fully determine the rights and interest in such compensation.

269. Verdict of jury. [Ch. 185, '95.] § 13. Upon the return of the verdict the court shall order the same to be recorded, and shall enter such judgment thereon as the nature of the case may require and upon the payment or tender of the amount of damages assessed by the jury, with the clerk of said court for the benefit of such railway company said plaintiff may proceed to erect a public warehouse upon the site selected as aforesaid and condemned as hereinbefore provided and to occupy the same. The right of occupancy only shall be vested in said plaintiff or his or their heirs or assigns.

270. Extensions of lands condemned. [Ch. 185, '95.] § 14. Such condemnation of such right of way, depot grounds or warehouse lots

and said right of occupancy shall only extend to so much of said grounds as is necessary for the accommodation of such public warehouse and for the convenient operation thereof, together with necessary grounds and free access thereto from the nearest public thoroughfare.

271. Board of appraisers — duties of. [Ch. 115, '91.] § 4. The applicant for such public warehouse site may thereupon, after five days' notice to such railway company, which notice shall be served as summons are required by law to be served in civil actions, apply to the circuit court in and for the county where such proposed public warehouse is situated, for the appointment of three appraisers, whose duty it shall be to determine the damage sustained by said railway company by the use and occupancy of such site for such public warehouse; such appraisers shall be freeholders of the county wherein such site is located, and shall not be interested in a like question. The appraisers shall be duly sworn to perform their duties impartially and justly; they shall inspect the said location and consider the injury which said railway company will sustain by the erection of said public warehouse upon the said site and the occupancy thereof, and shall assess the damage which such company will sustain by the occupancy of said site for such public warehouse purposes, and they shall forthwith make report, in writing, to the clerk of such court setting forth the description boundaries and amount of damage to such right of way which they assess, to said applicant, which report must be filed and recorded by the clerk, and a certified copy thereof may be transmitted to the register of deeds of the county where the site is situated, to be by him filed and recorded, without further proof or acknowledgment, in the same manner and with the same force and effect as provided for the record of deeds.

272. Payment of damages, how tendered. [Ch. 115, '91.] § 5. The applicant for such public warehouse site may thereupon pay or tender the payment of the damages so assessed by depositing the same with the clerk of said court for the benefit of said railway company, and thereupon and thereafter may proceed to erect a public warehouse upon the site so selected and condemned as hereinbefore provided and to occupy the same. The right of occupancy only being vested in said applicant or his or their heirs and assigns.

273. Appeal may be taken. [Ch. 115, '91.] § 6. That either party may appeal to the circuit court from the assessment of the said appraisers within thirty days after the said report is filed with the clerk of the court as hereinbefore provided, and the trial of such appeal shall be conducted in all things as a trial of a civil action in such court, but if

the appellant does not recover a verdict more favorable to said appellant than the assessment of the appraisers, he shall not recover costs in the circuit court, and all costs of said appeal shall be taxed against said appellant. Such appeal shall not interfere with the right of the applicant to occupy such site and to erect a public warehouse thereon, but such railway company shall have a first lien upon any building so erected for any increase of damages recovered in the circuit court, together with the costs incident thereto.

274. Pay of appraisers. [Ch. 115, '91.] § 8. Each of the appraisers shall be entitled to a fee of one dollar and to ten cents for each mile necessarily traveled in making such appraisal.

275. Costs to be paid by applicant. [Ch. 115, '91.] § 9. All costs incident to the appointment of appraisers and to the appraisal of damages provided for herein shall be paid by the applicant for said public warehouse site.

276. Facilities for shipping. [Ch. 115, '91.] § 10. That upon the application of any person or firm owning or occupying any public warehouse, or any mill adjacent to the right of way of any railway company, such person or firm shall be granted the same facilities for shipping that are granted any other shipper at the same place.

ARTICLE 3. DEPARTMENT OF AGRICULTURE.

277. Department of agriculture created — two districts. [Ch. 7, '89.] § 1. There is hereby created a department of agriculture for the promotion of agriculture and horticulture, manufactures and domestic arts, which said department shall be divided into two districts and shall be managed by boards styled district boards of agriculture, to consist of one person from each legislative district, within the limits of the agricultural districts hereinafter defined, and who shall be first appointed by the governor for the second district and for the year eighteen hundred and eighty-seven, the persons comprising the present board of agriculture who reside within the said first district, shall continue as the board of agriculture for said first district and thereafter according to the provisions of this act. The board for district number one shall meet at Huron on the twenty-ninth day of March, eighteen hundred and eighty-seven. And the board of district number two shall meet at Fargo on the twenty-ninth day of March, eighteen hundred and eighty-seven, for the election of officers and for the location of annual fairs, and annually thereafter at their first annual meeting.

The members of said district boards shall be chosen as follows, by delegates or alternates, or the written proxies thereof, of their respective

legislative districts, chosen by the several agricultural societies in counties where such societies exist in the following manner, to-wit: In counties having one agricultural society, such county may appoint three delegates, in counties having two agricultural societies, each society may appoint one delegate, who shall be entitled to one and one-half votes; in counties having three agricultural societies, each society may appoint one delegate, and if either society shall neglect or refuse to appoint such delegate, the delegate or delegates appointed shall be entitled to cast the full vote of the county; and in counties where no agricultural society exists the delegates may be appointed by the board of supervisors or county board as the case may be, each county to be entitled to three votes and no more, and each union or district agricultural society shall be accredited to that county in which its fair grounds or the greater part thereof shall be located. Delegates so chosen, shall meet and cast their votes for their respective members on the fair grounds on the Wednesday of the week of the annual fairs. In case of a tie election it shall be decided by chance. The members of said district boards shall enter upon the duties of their office on the second Tuesday of January succeeding their election, and hold office for one year and until their successors are elected and qualified. The district boards may fill any vacancy arising from any cause by appointment, from the district in which the vacancy may occur. All that portion of the state of South Dakota lying south of the seventh standard parallel shall be styled and known as district number one, and all that portion of the state of South Dakota lying north of said parallel shall be styled and known as district number two.

278. Secretary—salary. Each district board shall appoint some person, not a member of the board, secretary, and fix his compensation, said compensation not to exceed two hundred dollars per annum, who shall hold his office during the term for which the members of the board appointing him are elected, unless for good cause he shall sooner be removed by the board, and who shall perform such duties as usually pertain to the office of secretary, or as shall be required of him by the district board. [C. L. 178.]

279. Treasurer—Salary. Each district board shall also appoint some person, not a member of the board, as treasurer, and fix his compensation, said compensation not to exceed one hundred dollars per annum, who shall give bond in such sum and with such security as the board shall direct, conditioned for the faithful discharge of the duties of his office. He shall hold his office during the term for which the members of the board appointing him are elected, unless for good cause he shall sooner be removed by the board. He shall keep an accurate

itemized account of all money received by him and paid out, and make an annual report thereof to the district board, and make full settlement with the board. [C. L. 179.]

280. Offices, where kept. The district boards shall keep offices for the transaction of business at places located by said boards at their annual meeting. [C. L. 180.]

281. Powers of district boards. [Ch. 7, '89.] § 5. The district boards of agriculture in their respective names may contract and be contracted with; may hold meetings for the necessary transaction of business; may purchase, hold or sell property; may sue or be sued in all courts of justice; may hold district fairs, farmers' institutes, and fat stock shows, at such times and places, as the board may determine, but this state shall never be liable for any debt or contract of said board.

282. Boards have control. [Ch. 7, '89.] § 6. The district boards of agriculture shall have the sole control of the affairs of the department of agriculture of all district fairs, farmers' institutes, and fat stock shows, and may make such by-laws and rules and regulations in relation to the department of agriculture and the management of the business of such department, and district fairs, farmers' institutes, and fat stock shows, and offering of premiums, as a majority of said board shall from time to time determine, not inconsistent with the constitution and laws of the state or of the United States.

283. Annual reports. The district boards of agriculture shall hold an annual meeting on the first Tuesday in December, and within ten days thereafter make and deliver to the governor a report of their acts and doings, as required by law, and no other annual report shall be made by said boards. [C. L. 184.]

284. Reports of kindred associations. [Ch. 7, '89.] § 9. Said district boards of agriculture shall append to and publish with their respective reports the annual report of the state entomologist and such other reports or essays connected with agriculture, horticulture, manufactures or the domestic arts, as in the judgment of said board the interests of the state require; said annual reports and appended essays not to exceed seven hundred printed pages, and one thousand copies of said report shall be published annually in pamphlet form, and the same shall be distributed jointly by the presidents of the district boards, and the president of the state, horticultural and forestry association, and a sufficient amount of money is hereby appropriated out of the state treasury to pay for publishing the same.

285. Special police. It shall be lawful for the district boards of agriculture or other agricultural society at or before the time for holding

its annual fair or fairs, to select and appoint as many persons to act in the capacity of special police as are by said societies deemed requisite to insure peace and good order on or about the grounds or place of holding such fair, for and during the holding of the same; *provided*, that such person before entering upon the duties of special police shall receive his authority from, and take the oath of office before, any judge or justice of the peace or other officer authorized to administer oaths, residing or holding his office in the town or municipal corporation most contiguous to the fair grounds or place of holding such fair, and shall receive from such judge or justice of the peace a certificate under seal of his appointment and authority to act as such special police, which shall be indicated by some appropriate badge of office, and when so authorized he shall be clothed with full police powers. [C. L. 186.]

286. Trespassing. Whoever trespasses on any fair grounds to commit any depredations upon the property of any agricultural society, by cutting or destroying any timber or trees, breaking or carrying away any box, trough, stall, bench, fence, lock, door, gate, lumber or other appurtenances to any fair grounds, whether within or without the inclosure thereof, shall be fined not less than five nor exceeding two hundred dollars, and shall be liable civilly for all damages sustained by such unlawful acts. [C. L. 187.]

287. Sale of liquor prohibited. [Ch. 7, '89.] § 12. Whoever shall keep any shop, booth, tent, wagon, vessel, boat, or other place for the sale of spirituous liquors, or expose for sale, sell or otherwise dispose of any spirituous liquors, or engage at gaming at or within one-half mile of the place where any agricultural, horticultural or mechanical fair is being held, under the auspices of the district or county boards of agriculture, shall for each offense be fined not less than five, nor more than one hundred dollars; *provided*, this section shall not affect tavern keepers, distillers or others actually exercising their calling at their usual place of business, six months immediately preceding the holding of the fair.

288. Arrest of violators. [Ch. 7, '89.] § 13. Any person violating the provisions of the preceding section may be arrested upon view, or upon warrant, by any sheriff, coroner, constable, or other officer authorized to make arrest, and such officer may seize and destroy such articles of gaming or liquors, and hold the booth, tent, wagon, vessel or boat *and* upon a judgment being rendered against the offender, the same *may* be sold upon the execution issued upon such judgment. And if sufficient property is not found to satisfy such fine, the offender may be committed to the county jail until the fine and costs are paid, or the prisoner discharged according to law.

289. Fair defined. Wherever the word "fair" occurs in this act, it shall be held to mean a bona fide exhibition of the four principal classes of live stock, together with agricultural and horticultural products and mechanical arts. [C. L. 190.]

290. Compensation. [Ch. 7, '89.] § 15. The officers and members of the district boards of agriculture, except the secretary and treasurer, shall serve without pay, but shall receive mileage at the rate of ten cents per mile one way from their home to the place of meeting of the society, and their necessary expenses while in the discharge of their duties, which shall be paid by the state treasurer, upon a warrant issued and certified to, by the president of the district boards of agriculture.

HORSES ENTERED FOR PRIZES.

291. Unlawful to enter under assumed name. [Ch. 155, '93.] § 1. It shall be unlawful for any person or persons knowingly to enter or cause to be entered for competition, or to compete for any speed purse, prize, premium, stake or sweepstake, offered or given by any agricultural or other society, association or persons in the state of South Dakota, or to drive any horse, mare, gelding, colt or filly under an assumed name or out of its proper class, where such prize purse, premium, stake or sweepstake is to be decided by a contest of speed.

292. Name not to be changed. [Ch. 155, '93.] § 2. That the name of any horse for the purpose of entry for competition in any contest of speed, shall not be changed after once having contested for a prize, purse, premium, stake or sweepstake, except as provided by the code of printed rules of the society or association under which the contest is advertised to be conducted.

293. Class, how determined. [Ch. 155, '93.] § 3. That the class to which a horse belongs for the purpose of entry in any such contest of speed shall be determined by the public performance of said horse in any former contest or trial of speed as provided in the printed rules of the society or association under which the proposed contest is advertised to be conducted.

294. Misrepresentation unlawful. [Ch. 155, '93.] § 4. It shall be unlawful for any person or persons to misrepresent or fraudulently conceal the public performance in any former contest or trial of speed, of any horse which he or they offer to enter for competition in any such contest.

295. Penalty. [Ch. 155, '93.] § 5. Any person violating any of the provisions of this act shall be guilty of a misdemeanor.

296. Board authorized to locate fair for term of years. [Ch. 170, '95.] § 1. The state board of agriculture is hereby authorized and empowered at its meeting on the nineteenth day of March next, to locate the state annual agricultural fair at such place within the state of South Dakota for a term of years not less than five nor more than ten years, as such board may deem it best for the interest of the department of agriculture; provided, that such location shall in no manner bind the state of South Dakota to pay for any expense connected with or growing out of the state agricultural fair, or the location thereof. •

METEOROLOGICAL BUREAU.

297. Bureau created. [Ch. 110, '90.] § 1. A state meteorological bureau is hereby created, and the governor is hereby authorized to designate some member of the faculty of the agricultural college at Brookings to act as director of said bureau, without extra compensation, whenever the chief signal office of the United States shall detail an observer to act as assistant to the director of said bureau.

298. Bureau to have supervision — crop bulletin. [Ch. 110, '90.] § 2. The meteorological bureau shall superintend the volunteer weather service now established in the state, and shall appoint such additional volunteer observers and crop reporters as may from time to time be considered necessary. Said bureau shall prepare from the reports of the volunteer observers a monthly meteorological summary and publish the same for free distribution. It shall also prepare and publish weekly, from the fifteenth of March to the first of September in each year, for free distribution, a crop bulletin containing a thorough review of the reports furnished by the reporters of the service.

SCHOOL AND PUBLIC LANDS.

299. Board of school and public lands created. [Ch. 136, '90.] § 1. The governor, commissioner of school and public lands and state auditor shall constitute a board which shall be termed "the board of school and public lands," and the powers and duties of which shall be as provided in this act.

300. Duties of commissioner — records. [Ch. 103, '91 ; ch. 136, '90.] § 2. The commissioner of school and public lands shall procure for the use of his office, and to be known and designated as seal of the commis-

sioner of school and public lands, and shall cause to be prepared and kept in his office a record of each subdivision of the lands granted to the state of South Dakota for all purposes. For the lands embraced within each grant for a distinct and specific purpose, separate books of record shall be provided. Such books shall contain a description of each subdivision and in columns opposite such description there shall be recorded, as may be required, the appraised value of the tract, the date of lease, name of lessee, term of lease and amount of annual rental, the date of sale, name of purchaser, price, amount paid in cash, amount unpaid and when due, amount of annual interest, date of patent, name of patentee, and such other information as may be necessary to make a full and complete abstract of the condition of such tract. (As amended in force March 7, 1891.)

301. Duties of board. [Ch. 136, '90.] § 3. The board of school and public lands shall designate from time to time such lands as it may decide should be leased. It shall establish such leasing regulations, not inconsistent with this act, as in its judgment shall be necessary in order that such lands may be leased most profitably to the state. The board shall prepare its first list of lands for leasing as soon as practicable. Upon the designation of lands as in this section provided, the commissioner of school and public lands shall proceed to offer the same for lease.

302. Advertisements. [Ch. 136, '90.] § 4. Whenever lands situated in any county shall be designated as provided in section three, such lands shall be advertised for lease at public auction by the publication, once a week for at least sixty days, in a newspaper of general circulation published nearest such lands, of a notice containing a description stating the township and range in which the lands to be leased are situated, stating the time and place at which such leasing of lands will begin. A notice of such leasing shall also be published once a week for at least sixty days in a newspaper of general circulation published at the seat of government. But it shall be optional with the board of school and public lands, to accept a bid for a lease covering a period of one year or more, not exceeding five years, and in case no bids or proposals are made for any term under the publication herein required, or in case of a failure, from any cause, to complete a lease of any tract offered, it shall, within six months thereafter, be lawful to make a lease of said lands under the provisions of this act, without a readvertisement.

303. Leased at public auction. [Ch. 146, '93; ch. 136, '90.] § 5. The lands designated shall be offered for lease at public auction to the highest bidder at the front door of the court house of the county within

which the lands to be leased are situated, or if there be no court house in such county then at the front door of the building in which the office of register of deeds of such county is located, and between the hours of ten o'clock A. M. and five o'clock P. M. only. The offering for lease shall be conducted by the county auditor of the county in which the lands lie, in accordance with the provisions of this act and such instructions as the board of school and public lands may deem necessary. In case the office of county auditor is vacant, or the incumbent thereof is unable to act, the duties prescribed in this act, for said officer shall devolve, during such vacancy or inability, upon the register of deeds of the county.

304. Auction continued from day to day. [Ch. 146, '93; ch. 136, '90.] § 6. The lease auction shall continue from day to day until all tracts of land advertised for lease shall have been offered for lease. The county auditor may, for good cause, adjourn the auction for a period of not more than three days. Whenever the highest offer for any tract of land is a satisfactory one and the tract is reserved for the bidder, such bidder must at once deposit with the county treasurer the amount specified as the annual rental for the tract and take the treasurer's receipt therefor, a copy of which shall be retained by the treasurer in his office. The bidder shall exhibit such receipt to the county auditor, who shall thereupon prepare a lease of such tract in duplicate, according to the form which the board of school and public lands shall prescribe, and shall procure the signature of the lessee thereto. Upon procuring such signature the county auditor shall transmit to the commissioner of school and public lands the lease so executed, together with a complete report of the case. Said commissioner shall submit the same to the governor for his approval. Should the governor approve the proposed contract, he shall certify to such approval upon the lease in duplicate, and the commissioner of school and public lands shall thereupon execute the same in duplicate in behalf of the state and file one copy in his office and transmit the other to the county auditor, who shall deliver it to the lessee, and notify the county treasurer of the execution and approval of the lease. The county treasurer shall then pay to the state treasurer the sum deposited by the lessee. Should the governor disapprove the proposed lease, the county treasurer shall thereupon return to the bidder the sum deposited in full, taking such bidder's receipt therefor on the back of the copy of the duplicate receipt issued to such bidder.

305. In unorganized counties. [Ch. 146, '93; ch. 136, '90.] § 7. Any unorganized county containing lands which the board of school and public lands shall deem advisable to offer for lease, shall be attached

for leasing purposes to some organized county, to be designated by the governor, and it shall be the duty of the county auditor and county treasurer of such organized county to perform the same services in connection with the leasing of lands situated in such unorganized county as they may be required to perform in connection with the leasing of lands situated in such organized county.

306. Period and purpose of lease. [Ch. 146, '93; ch. 136, '90.] § 8. No lease shall be executed for a longer term than five years. No lands shall be leased except for pasturage and meadow purposes.

307. May be re-offered. [Ch. 136, '90.] § 9. When a tract is offered for lease and no satisfactory bid is received therefor, the legal subdivisions thereof, if any, may be separately offered, or said tract may be offered in connection with contiguous tracts which have been offered and for which no acceptable bid has been received, but no greater quantity than one section shall be offered in such connection.

308. Rent — payable annually in advance. [Ch. 136, '90.] § 10. The rent for all leased lands must be paid annually in advance. The rent for each tract shall be promptly paid when due to the treasurer of the county in which such tract is situated.

309. Forfeiture of lease. [Ch. 136, '90.] § 11. Any lessee who shall use any tract leased by him for other than pasturage or meadow purposes shall forfeit his lease, except in cases where and upon such lands only, as have been broken or cultivated prior to the passage of this act. The commission of waste upon the land by the lessee shall cause a forfeiture of the lease and shall render the lessee liable to the state for damages caused by such waste. Actions shall be prosecuted in the circuit or county court of the county in which the land is situated, to enforce the provisions of this section, by the state's attorney of such county, whenever he is directed so to do by the commissioner of school and public lands.

310. Forfeiture for non-payment. [Ch. 136, '90.] § 12. The lessee of any tract, who shall fail to pay the annual rental for such tract when due, shall forfeit his lease, and the commissioner of school and public lands shall promptly notify the state's attorney of the county in which the land is situated to take such action as will prevent the further use of the land by such lessee.

311. Sale of lands. [Ch. 136, '90.] § 13. No lands of the state shall be sold until after January seventh, eighteen hundred and ninety-one. Not more than one-third of the lands of any class granted to the state for educational or charitable purposes shall be sold within the

first five years, and not more than two-thirds of such lands shall be sold within the first fifteen years after the date of the vesting of title thereto in the state. No more than one-tenth of the lands granted by the act of congress of February eighteenth, eighteen hundred and eighty-one, entitled: "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming, for university purposes," and vested in the state of South Dakota by section fourteen of the act of congress of February twenty-second, eighteen hundred and eighty-nine, entitled "An act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states and to make donations of public lands to such states," shall be offered for sale in any one year. Subject to the limitations herein expressed, and contained in the constitution of the state and said acts of congress, the board of school and public lands shall determine from time to time the quantity of lands of each class granted which shall be offered for sale, and shall specify the counties in which the lands to be offered for sale shall be selected, and the quantity of each class which shall be selected in each of such counties. The board shall so apportion the quantity to be selected that the most valuable lands may first be selected and designated for sale.

312. Board of appraisal — duties of board. [Ch. 146, '93; ch. 103, '91; ch. 136, '90.] § 14. For each county there is hereby created a board of appraisal, consisting of the commissioner of school and public lands, the state auditor, and the superintendent of schools of such county. Whenever the board of school and public lands shall direct the selection of lands in any county to be offered for sale the board of appraisal of such county shall select the quantity required and designate for sale each tract. Said board of appraisal shall take care to first select and designate for sale the most valuable lands, and shall ascertain all such lands as may be of special and peculiar value other than agricultural, and cause the proper subdivision of the same, in order that the largest price may be obtained therefor. The expense of the subdivision "and platting" of any tract shall be paid out of the interest and income fund of the class to which such tract belongs, on warrants drawn by the state auditor. Such lands as shall not have been specially subdivided shall be designated in separate tracts of not more than eighty acres each, and the smallest subdivisions of those so subdivided shall be separately designated. The board of appraisal shall appraise each separate tract of land so selected and designated at its actual value under the terms of sale, except such as were granted by the aforesaid acts of congress of February eighteenth, eighteen hundred and eighty-one, and vested by section fourteen of aforesaid act of congress of February twenty-second, eighteen

hundred and eighty-nine. Returns of all appraisals shall be made to the office of the commissioner of school and public lands. Descriptions of such of the lands so selected and designated as were granted by said acts of congress of February eighteenth, eighteen hundred and eighty-one, and vested by section fourteen of said act of congress of February twenty-second, eighteen hundred and eighty-nine, shall be furnished to the governor by the commissioner of school and public lands, and the governor shall request the secretary of the interior of the United States to order the appraisal of such lands and to appoint commissioners for such purpose.

313. Advertisements. [Ch. 136, '90.] § 15. Whenever lands situated in any county shall be selected and designated for sale, and the returns of the appraisal thereof have been made to the office of the commissioner of school and public lands, or when returns of the appraisal of lands appraised under the direction of the secretary of the interior shall have been procured by the commissioner of school and public lands, such appraised lands shall be advertised for sale at public auction by the publication once a week for at least sixty days in a newspaper of general circulation published in the vicinity of such lands, nearest such lands of a notice of such sale, containing a description stating the number of the township and range in which such lands are situated, stating the time and place at which such sale of land will begin. A notice of such sale shall also be published once a week for at least sixty days, in a newspaper of general circulation published at the seat of government.

314. Minimum price — Rate of interest. [Ch. 136, '90.] § 16. No land shall be sold for less than the appraised value and in no case for less than ten dollars an acre. The purchaser of lands donated for educational and charitable purposes, except such as may be and shall be sold for cash, shall pay one-fourth of the price in cash and the remaining three-fourths as follows: One-fourth in five years, one-fourth in ten years, one-fourth in fifteen years, with interest thereon at the rate of six per centum per annum, payable annually in advance. Upon payment of the interest for one full year in advance, the balance of the purchase price may be paid at any time. All specially subdivided lands may be sold for cash. Such lands as shall not have been specially subdivided shall be offered for sale in tracts of not more than eighty acres, and those so subdivided shall be offered in the smallest subdivision.

315. Duty of commissioner of school and public lands. [Ch. 146, '93; ch. 136, '90.] § 17. All sales shall be conducted through the office of the commissioner of school and public lands. The commissioner of school and public lands shall, at the time appointed, direct the sale of the lands designated. In case the office of commissioner is vacant, or

the incumbent thereof is unable to act, the duties prescribed in this section may be performed by his agent duly appointed and commissioned by him for that purpose, which said appointment the commissioner is hereby empowered to make. Said lands shall be sold at public auction to the highest bidder, at the front door of the court house of the county in which the said lands are situated, or if there be no court house in such county, then at the front door of the building in which the office of the register of deeds of the county is located, and between the hours of ten o'clock A. M. and five o'clock P. M. only. No bid shall be received for less than [the] appraised value and in no case for less than ten dollars per acre. The commissioner of school and public lands or his agent may adjourn the sale from day to day, and for good cause may adjourn it for a period of not more than three days. The county auditor shall act as clerk at all sales of school lands and shall keep a complete record of such sales and forward a certified copy of the same to the commissioner of school and public lands.

316. Deposit of bid. [Ch. 146, '93; ch. 136, '90.] § 18. Whenever a bid is accepted, the purchaser must at once deposit with the county treasurer the amount of the first payment of the price named, together with the amount of the interest for the fiscal year on the deferred payments, or if the same be sold for cash, he must deposit the full amount of the price named, and in either case, take the treasurer's receipt for the money deposited, a copy of which receipt shall be retained by the treasurer in his office. The purchaser shall exhibit said receipt to the county auditor, who shall thereupon make a complete report of the case to the commissioner of school and public lands. No sale shall operate to convey any right or title to any lands for sixty (60) days after the date thereof, nor until the same shall have received the approval of the governor.

317. Contract of sale. [Ch. 146, '93; ch. 136, '90.] § 19. The commissioner of school and public lands shall on receipt of a report that a tract has been sold, cause to be prepared a contract of sale for such tract in duplicate, according to a form which the board of school and public lands shall prescribe, if the land is to be paid for in installments, and shall submit the same to the governor for his approval. Should the governor approve the sale, he shall certify to such approval upon the contract, and the commissioner of school and public lands shall thereupon execute the same. One copy of said contract shall be filed in the office of the said commissioner, and the other shall be forwarded to the county auditor, to be delivered to the purchaser, after the expiration of sixty (60) days from the date of sale. Whenever the said commissioner receives a report stating that a tract has been sold for cash, he

shall report such sale to the governor. Should the governor approve the sale, the said commissioner shall cause to be prepared a patent for such tract, according to a form which the board of school and public lands shall prescribe, which shall be executed in the name of the state by the governor and attested by the said commissioner, under the seal of his office. Such patent shall be forwarded to the county auditor for delivery to purchaser after the expiration of sixty (60) days from the date of sale. Upon the delivery of a contract or patent to a purchaser, as herein provided, the county auditor shall notify the county treasurer of such delivery. The county treasurer shall then pay to the state treasurer the money deposited by such purchaser. Should the governor disapprove the sale of any tract, the county treasurer shall return to the purchaser thereof the sum in full, deposited for such tract, taking such purchaser's receipt therefor on the back of the original receipt issued to such purchaser.

318. Duty of county treasurer. [Ch. 136, '90.] § 20. The county treasurer of each county shall, on the first day of each month, pay to the state treasurer all moneys received by him during the preceding month on account of leased or sold lands.

319. Duty of state treasurer. [Ch. 136, '90.] § 21. The state treasurer shall keep a distinct and separate account of all moneys received as rental for the common school and each other class of land, and also keep distinct and separate accounts both of principal and interest of moneys received on account of each class of lands sold. He shall furnish the commissioner of school and public lands a statement of all moneys received on account of each tract leased or sold.

320. Funds. [Ch. 136, '90.] § 22. The income from the leased lands of each class and the interest on the permanent fund of that class shall be assigned by the state treasurer to a fund to be known as the interest and income fund of such class. The principal of moneys derived from the sale of each class of lands granted to the state for educational and charitable purposes shall be assigned by the state treasurer to a fund to be known as the permanent fund of such class.

321. Account to be kept by commissioner. [Ch. 103, '91; ch. 136, '90.] § 23. The commissioner of school and public lands shall keep an accurate account of all moneys due or to become due the state on account of leases and contracts of sale. "The fiscal year shall end on the thirty-first day of December of each year." He shall supervise the collection of all moneys due as aforesaid, and shall on or before the first day of January of each year transmit to the treasurer of each county a statement of the sums to become due during the ensuing year from lessees and purchasers of lands in such county.

322. Fees for advertisements. [Ch. 136, '90.] § 24. Each class of lands, when offered for sale or lease, shall be advertised in separate notices, and the advertising for each class shall be paid for not to exceed legal rates, on warrants drawn by the state auditor on the interest and income fund of such class. Every bid for such advertising shall be verified by the publisher's affidavit or the affidavit of his foreman, to which shall be attached a copy of the advertisement for which the charge is made.

323. Duty of commissioner to prepare advertisements. [Ch. 136, '90.] § 25. It shall be the duty of the commissioner of school and public lands to prepare all advertisements provided for in this act and to cause them to be published as herein directed. signed by him as such commissioner.

324. Sales may be set aside. [Ch. 136, '90.] § 26. The deferred payments for lands sold and the interest thereon shall be promptly paid when due, to the county treasurer. Whenever the purchaser of any tract shall fail to pay the principal or interest due by him to the state for such tract, or shall violate any of the provisions of the contract of sale, such sale may be set aside by the circuit court of the county in which the tract is situated. Actions shall be prosecuted to enforce the provisions of this section by the state's attorney of such county whenever he is directed so to do by the commissioner of school and public lands.

325. Receipts in triplicate. [Ch. 103, '91; ch. 136, '90.] § 27. The county treasurer shall, for all moneys paid to him by any lessee or purchaser, execute triplicate receipts, and shall deliver one to the person paying the same, transmit one to the commissioner of school and public lands, and file the other in his office.

326. Patent. [Ch. 103, '91; ch. 136, '90.] § 28. When full payment has been made for any tract sold, and not before, a patent for such tract, executed in the name of the state by the governor, and attested by the commissioner of school and public lands, under the seal of his office, shall be issued to the purchaser of such tract, his heirs or assigns.

327. Claims by trespassers. [Ch. 136, '90.] § 29. No claim to any public lands by any trespasser thereon by reason of occupancy, cultivation or improvement thereof, shall be recognized; nor shall compensation be made on account of any improvements made by any such trespasser.

328. Rights of lessee. [Ch. 136, '90.] § 30. The lessee of any land under the provisions of this act may erect thereon such fences, build-

ings and well apparatus, as may be necessary to fully carry out the purposes of the lease, and shall have the right to remove the same at any time, prior to the expiration of the term of such lease, and during a period of thirty days thereafter, and may sink such wells thereon as may be necessary. Any person who has heretofore entered upon such land, and has made permanent improvements thereon in good faith, for the purposes of residence or cultivation, shall have the right to remove all such improvements therefrom in case he does not become purchaser or lessee of such lands under the provisions of this act. Such removal to be made within thirty days after such sale or lease, as the case may be.

329. Lands subject to taxation. [Ch. 146, '93; ch. 136, '90.] § 31. Whenever a county auditor shall deliver a contract of sale to a purchaser of lands under the provisions of this act, the auditor shall take notice of the same, and such land shall thereupon become subject to taxation the same as other lands; and taxes shall be assessed thereon, collected and enforced, in like manner as taxes on other lands. *Provided, however,* That the purchaser of any such land sold for delinquent taxes shall acquire and shall only acquire by virtue of such purchase, such rights and interests as belong to the party holding the contract of sale, hereinbefore provided for, and the right to be substituted in the place of such holder as the assignee thereof, and upon exhibition to the proper officer of the tax certificate given at a tax sale in case said land has not been redeemed, such tax purchaser shall have the right to make any payment of principal or interest then in default upon such contract of sale, as the assignee thereof, prior to the redemption of said land. And in case such holder of such contract of sale shall fail to redeem said land within the time allowed by law for the redemption of other lands sold for taxes, and also pay to said proper officer, for the use of the holder of said tax certificate, all payments of principal and interest, if any, made by him upon such contract of sale, with the interest from the time so made at the rate of twelve (12) per cent. per annum, then the holder and owner of such tax certificate, upon the receipt of a tax deed thereon, duly given, and the filing of a certified copy of the same with the commissioner of school and public lands, shall be given by the said commissioner a special contract of sale of said lands, embodying the same terms and conditions and with like force and effect as the original contract of sale and in lieu thereof.

330. Board of appraisers — duties of. [Ch. 146, '93; ch. 136, '90.] § 32. A board of appraisers is hereby created in each organized county of the state, consisting of the board of county commissioners and the county superintendent of schools, whose duty it shall be on the next

Wednesday after the first Monday of January in each year, to make a minimum leasing appraisal of each school section or part of school section in their respective counties. A report of such appraisal shall be forwarded by said board of appraisers to the commissioner of school and public lands on or before the tenth day of January in each year, and it shall be the duty of the board of school and public lands to adjust and revise the leasing rates of the different counties in accordance with the several reports received by them from such boards of appraisers.

331. Protection or title — duty of attorney general. [Ch. 139, '90.]

§ 1. It shall be the duty of the attorney general to make examination at each of the United States land offices of this state as to the condition of the titles to all school and public lands, and to take such steps before said land office of the United States, and the department of the interior, as may be necessary to protect the title of the state thereto, and he may employ such clerical assistance as is requisite therefor.

331a. Commissioner authorized to sell fallen timber. [Ch. 110, '99.]

§ 1. That the commissioner of school and public lands is hereby authorized to sell any dead or fallen timber upon any of the school and public lands of the state of South Dakota, or any timber on such lands that has been washed out by any stream of water running through or bordering upon the same, and shall advertise the same prior to sale when he shall deem it advisable.

331b. Moneys, how applied. [Ch. 110, '99.] § 2. That the moneys arising from such sales shall be paid by the purchaser into the county treasury of the proper county, and shall be transmitted to the state treasury in the same manner as other school funds and shall be placed to the credit of the permanent fund of that class to which the lands belong from which such timber may be sold.

TRESPASS ON SCHOOL AND PUBLIC LANDS.

332. Trespass defined — penalty. [Ch. 140, '90.] § 1. Any person or persons who shall commit willful waste or depredation on any school

or public lands of this state, or who shall break up or attempt to cultivate any part of said lands, or who shall attempt to use said lands for meadow or pasturage purposes, or who shall remove from said land any wood, hay, stone, or other valuable thing, naturally a product of or an appurtenance to said lands, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars or more than one hundred dollars, or imprisonment in the county jail for a period of thirty days, or both, in the judgment of the court; and any justice of the peace within the county where such offense shall be committed shall have jurisdiction to try and determine all cases arising under the provisions of this act: *Provided*, that it shall not be deemed a trespass under the provisions of this act to use any of said lands for meadow and pasturage purposes if a lease therefor has been obtained from the board of school and public lands or the county superintendent of schools in the county in which said lands are located, acting under authority of said board of school and public lands.

333. Fine and punishment for removal of timber. [Ch. 140, '90.]

§ 2. Any person or persons who shall remove or attempt to remove any timber or wood standing or growing on said public and school lands shall, in addition to the penalties provided for in this act, and on conviction thereof be punishable by a fine of not less than one thousand dollars nor more than two thousand dollars, or by imprisonment in the penitentiary for not less than one year, nor more than five years, or both, in the discretion of the court.

334. Liability in civil action for damages. [Ch. 140, '90.] § 3.

Any person who shall violate the provisions of this act shall be liable to civil suit for damages resulting from their act or acts in addition to the criminal action herein provided for, and it shall be the duty of the state's attorney in any county where complaint is made to bring suit, in the name of the state, to recover damages for such violation in any competent tribunal, and the sum or sums adjudged by the court as the

result of such action shall be covered into the state treasury and placed to the credit of the permanent fund of the class to which said land belongs.

APPORTIONMENT OF LAND FUNDS.

335. Apportionment to be made by the commissioner of school and public lands. [Ch. 137, '90.] § 1. The commissioner of school and public lands is hereby authorized and empowered to make a division and apportionment of all funds arising from the lease of public and school lands from accrued interest on all invested funds derived from the sale of public and school lands, belonging to the state and from accrued interest on invested funds derived from the five per centum paid to the state by the United States on sales of public lands, within the state. Said apportionment to be made among the several counties and the educational, penal and charitable institutions of the state, as hereinafter provided.

336. Duty of state treasurer. [Ch. 137, '90.] § 2. It shall be the duty of the state treasurer on or before the fifteenth day of June in each year to certify to the commissioner of school and public lands the amount of funds in his possession to the credit of the interest fund of each class of lands, the interest fund of the five per centum paid by the United States to the state of South Dakota on sales of public lands within the state and also the amount received by him for leases on each class of lands.

337. Apportionment, pro rata, of the land funds. [Ch. 137, '90.] § 3. The commissioner of school and public lands shall then proceed to apportion the several funds as follows: He shall ascertain from the superintendent of schools of the several counties of the state the total number of children of school age in their respective counties, as ascertained by the last school census enumeration returned by the several township and county assessors, and on the basis of the school population of the several counties so ascertained he shall apportion to each pro rata

such share as their population entitles them to of the funds derived from the lease of school lands, the lease of public schools not apportioned to any educational, penal or charitable institution, the accrued interest on invested funds derived from the sale of school lands and public lands not apportioned to any educational, penal or charitable institution and the accrued interest on invested funds derived from the five per centum paid by the United States on sale of public lands within the state. An itemized statement of the apportionment when made as herein provided shall be delivered by the commissioner of school and public lands to the state auditor who shall thereupon draw his warrant on the state treasurer for the amounts designated on the statement so furnished and transmit the same to the treasurers of the several counties of the state to be by them covered into the general tuition fund and distributed among the separate school corporations as provided by law.

338. Land funds belonging to state institutions. [Ch. 137, '90.]

§ 4. The commissioner of school and public lands shall also apportion the funds arising from accrued interest on invested funds derived from the sale of public lands, apportioned to the educational, penal and charitable institutions of the state, or from leases of said lands, and shall deliver a statement of said apportionment to the state auditor who shall thereupon issue his warrant on the state treasurer for the amounts designated in said statement and transmit the same to the treasurers of the respective institutions.

This section is not repealed by chapter 97, Laws 1895. *Heston v. Mayhew, State Auditor*, S. D. ; 70 N. W. Rep. 635.

INVESTMENT OF SCHOOL FUNDS.

344. Funds — how invested. [Ch. 145, '93.] § 1. All moneys of the permanent school and other educational funds shall be apportioned for investment in the classes of securities mentioned in section eleven of article eight of the constitution as follows:

So long as there shall be any demand for the same, they shall be invested only in farm mortgages and bonds of school corporations.

Whenever any bonds of the state shall fall due and the state shall have determined to refund the same, then any moneys in the funds mentioned in this section which shall have been returned to the state treasurer by the counties to which it shall have been intrusted, may be invested in such refunding bonds at their par value, and for that purpose such funds shall have preference over other bidders for such bonds.

345. Rate of interest. [Ch. 145, '93.] § 2. If the rate of interest upon such refunding or other state bonds held for said funds be less than six per cent., such bonds shall be sold whenever the demand for said funds for investment in farm mortgages and bonds of school corporations shall be sufficient to exhaust the proceeds of the same in any sum not less than twenty-five thousand (\$25,000) dollars.

346. Apportionment to counties. [Ch. 144, '93.] § 1. The moneys of the permanent school and other educational funds shall be divided by the commissioner of school and public lands among the organized counties of the state in proportion to the population as nearly as may be, subject to the following provisions.

First. On or before the tenth day of May and November in each year, the commissioner of school and public lands shall cause to be made an estimate of the amount of permanent school and other educational funds which will be on hand and uninvested by the first day of July or January next ensuing.

Second. The amount of such estimate shall be apportioned among the several organized counties of the state in proportion to population, and the county auditors of the several counties shall be forthwith notified of the amount so apportioned.

Third. On receiving said notice, if no applications for loans of such funds upon first mortgages upon improved farm lands or bonds of school corporations in an amount sufficient to cover said estimate shall be on file in the office of the county auditor, he shall cause notice to be published in the newspapers designated by the board of county commissioners as the papers in which to publish the proceedings of the county, which notice shall state the amount of money which will be in the county treasury for such loans, and the terms upon which the same may be loaned, and that applications therefor will be received at the office of the county auditor, which notice shall be published at least once in each week for six successive weeks commencing as near the fifteenth day of May

and November, as may be possible. Should applications sufficient to take up all of such funds be received before the expiration of such period of publication of said notice the publication of said notice may be discontinued.

Fourth. If no applications for loans of such funds shall be received by the county auditor prior to the first day of July or January as the case may be, he shall promptly notify the commissioner of school and public lands of the fact. If applications shall be received by the county auditor in excess of the amount of the estimate for such county, the auditor shall on or before the first day of July or January as the case may be notify the commissioner of school and public lands of the amount of such applications so received.

Fifth. If the total amount of applications for loans of such funds as certified by the several county auditors to the commissioner of school and public lands shall exceed the amount of moneys in said funds on hand for distribution, the commissioner shall distribute said funds by sending to the counties applying for less than the apportionment the full amount of their several applications, and shall divide the remainder of such apportionments among the counties applying for more than the amounts apportioned to them separately, proportionately.

Sixth. If the amounts of the applications certified by the several county auditors to the commissioner of school and public lands shall be less than the full amounts of such funds on hand for distribution, such funds shall be distributed in proportion to population among the several counties.

Seventh. If the amounts of applications certified by the county auditor shall be equal to the amount of moneys on hand for distribution, the same shall be distributed accordingly.

347. Duties of county treasurer. [Ch. 144, '93.] § 2. All moneys sent by the commissioner of school and public lands to the several counties under the provisions of this act, shall be delivered to the county treasurer, who shall execute triplicate receipts therefor, one to be filed with the county auditor, one with the state treasurer and one with the commissioner of school and public lands. It shall be the duty of the county treasurer to receive, collect and account for all moneys belonging to said funds received from the state or from individuals or school corporations in payment of principal or interest of loans of the same made by the county.

348. Loans by county, how made. [Ch. 144, '93.] § 3. Each county shall loan or invest and keep invested all the funds so received from the commissioner of school and public lands as aforesaid in bonds of school corporations bearing interest at six per cent. per annum pay-

able semi-annually or in first mortgages upon good, improved farm lands within its limits respectively, but no farm loans shall exceed five hundred dollars to any one person, nor shall it exceed one-half of the full value of the lands as assessed for taxation, and the rate of interest shall be six (6) per cent. per annum, and shall be payable semi-annually on the first day of January and July. All mortgages shall be made in the name of the state as mortgagee.

349. Form of mortgages and bonds. [Ch. 144, '93.] § 4. It shall be the duty of the commissioner of school and public lands and the attorney-general of the state to prepare a form of mortgage and a form of school bond for use in loaning or investing said funds, which form shall be used exclusively in all counties in making such loans or investments. *Provided*, That such form of mortgage shall contain the provision that default in the payment of the interest thereon at any time for a period of ten days after the same shall become due shall cause the whole principal and interest of said mortgage to become at once due and payable.

350. Duties of county officers. [Ch. 144, '93.] § 5. It shall be the duty of the board of county commissioners to cause from time to time such notice to be given by publication in the newspapers of the county, if any be published therein, as will fully advise the people of the county whenever any moneys of such funds are in the county treasury for investment as in this act provided. The state's attorney shall examine and approve the abstracts of title of such lands as shall be offered as security for such loans. No loan of such funds shall at any time be made to any county officer while in office.

351. Accounts. [Ch. 144, '93.] § 6. The county treasurer and county auditor shall each keep accurate books of account of the permanent school funds, in which shall be entered in detail all mortgages and school bonds held by the county, the dates of maturity of each, and shall on the first day of January and July in each year report in detail the condition of such funds and securities in triplicate, one to the commissioner of school and public lands, one to the auditor of state and the other to the state treasurer, and with such report to the state treasurer the county treasurer shall pay to the state treasurer all interest due to the date of payment upon such permanent school and other educational funds for which such county is liable at the rate of six (6) per cent. per annum payable semi-annually; all interest collected by the county in excess of six (6) per cent. per annum shall be retained by the county and placed in the county general fund.

352. Penalties. [Ch. 144, '93.] § 7. Any county auditor or county treasurer or county commissioner or county or state's attorney failing,

refusing or neglecting to perform any of the duties which are required of him by this act and at the time required shall be liable to a fine of not less than fifty dollars or more than two hundred dollars, to be recovered in a civil action in the circuit court against him and his bondsmen.

353. Moneys returned by counties. [Ch. 144, '93.] § 8. Whenever any moneys of the permanent school or other educational funds shall have been sent to or received by any county, and no applications for loans of the same, as provided in this act, shall have been made after the notice, as hereinbefore provided, shall have been continuously published for thirty days next succeeding the first day of January or July when such money was received, the county auditor shall certify the facts to the commissioner of school and public lands with a statement that such money cannot be loaned. It shall be the duty of the commissioner to order the said funds, if they amount to the sum of one thousand dollars, to be returned to the state treasury forthwith with interest thereon as herein provided for a period of sixty days, and when so returned to the state treasurer, such funds shall be redistributed by the commissioner or invested in other securities as provided by law.

354. Remedies. [Ch. 97, '97; ch. 144, '93.] § 9. (a) In case or default in the condition of any mortgage taken by any county pursuant to the provisions of this act by reason of which the right to foreclose the same shall accrue, the county treasurer shall notify the state's attorney of such default and the state's attorney shall foreclose such mortgage by action in the manner provided by law for the foreclosure of mortgages upon real property. If no other person shall bid the full amount due upon such mortgage upon the foreclosure sale of the same, with the costs and expenses of the foreclosure and sale, the state's attorney or county auditor shall bid the land in the name of the county, and if the same is not redeemed as provided by law, the sheriff's deed shall be made to the said county and the said county shall thereby become the owner of said land; and

(b) That all lands bid in in the name of the state under the provisions of chapter one hundred and sixty-two of the session laws of eighteen hundred and ninety-five shall be deeded to the county responsible to the state for the school fund secured by the land so bid in in the name of the state.

355. How cancelled — Duty of county treasurer. [Ch. 137, '95.] § 1. Upon the full payment of any school fund mortgage within the

state of South Dakota, it shall be the duty of the county treasurer of the county in which such school fund mortgage was recorded, to cancel the notes and mortgage by stamping them as paid, and to deliver to the person paying the same a certificate of the payment thereof, which certificate shall be presented to the auditor of such county and filed by him in his office, whose duty it shall then be to execute a full release and satisfaction thereof.

356. State may be bidder on foreclosure sale. [Ch. 128, '95.] § 1. That in all cases in which judgments shall be rendered in favor of the state in any action now pending or hereafter to be commenced in any court in the state against any person, corporation or body politic, and real property is levied upon and sold to satisfy such judgment, the commissioner of school and public lands is authorized, and it shall be his duty to represent the state as a bidder in behalf of the state at such sales, and in case he shall purchase at any such sale, the certificate of purchase, and if afterward a deed shall be issued, such deed shall run to the state of South Dakota.

357. Maximum price to be fixed by appraisal. [Ch. 128, '95.] § 2. The maximum price which said commissioner of school and public lands shall bid for any such property at any such sale shall be determined by an appraisal to be made in the same manner that the school and public lands of the state are by law required to be appraised, but such price shall never exceed above prior incumbrances, the amount of the judgment, interest, and costs.

358. Proceeds of sales — how disposed of. [Ch. 128, '95.] § 3. All moneys received as the proceeds of any such sales, or in satisfaction of any judgment obtained in favor of the state in any such action, shall be paid to the state treasurer, and by him divided and apportioned according to law.

ARTICLE 4. BOARDS OF HEALTH.

359. State board — to consist of whom — term of office. [Ch. 96, '95.] § 1. That there shall be appointed in this state a state board of health, which shall consist of five members, all of whom shall be resident physicians in good standing in this state, who shall constitute a state board of health. Such physicians so appointed shall hold their offices for the term of five years. *Provided*, That the members of the present state board of health shall hold their offices for the term for which they were appointed, under and by virtue of an act entitled:

“An act to establish a board of health and regulate the practice of medicine in the state of South Dakota,” approved on the tenth day of March, eighteen hundred and ninety-one, and *provided, further*, that within ten days after the taking effect of this act, the governor shall appoint two resident physicians under the provisions herein, one for a term of three years, and one for a term of four years from and after the first Monday in April, eighteen hundred and ninety-five.

360. Governor to appoint. [Ch. 96, '95.] § 2. The governor shall, on the first Monday in April of each year, appoint a member, who shall be a resident physician of the state in good standing, to fill the vacancy occurring. The governor shall also have power to fill in like manner a vacancy occurring at any time in said board.

360a. Officers of. [Ch. 96, '95.] § 3. The member whose term of office shall first expire shall be the president and superintendent of said board, and the member whose term shall be the second to expire shall be the secretary, and the member whose term shall be the third to expire shall be vice president.

360b. Duty of secretary. [Ch. 96, '95.] § 4. The secretary shall keep a correct record of all the proceedings of the state board of health, and such record shall always be open to the public for inspection.

361. Powers. [Ch. 96, '95.] § 5. The state board of health shall meet at the place designated by the superintendent, on the first day of May and November of each year, and such other times as said board shall deem necessary, and shall have power as follows:

1. To make rules and regulations for the government of said board, its officers and meetings.

2. To make and enforce any and all needful rules and regulations for the prevention and cure, and to prevent the spread of any contagious, infectious, or malarial diseases.

3. To establish quarantine, and isolate any person affected with contagious or infectious disease.

4. To isolate, kill or remove any animal affected with contagious or infectious disease, when the same is dangerous to public health.

5. To remove or cause to be removed, any dead, decaying or putrid body, or any decayed, putrid or other substance that may endanger the public health.

6. To condemn or cause to be destroyed any impure or diseased article of food that may be offered for sale.

7. To superintend the several boards of health in cities, villages and towns, and the county boards of health of the several counties.

8. To empower and direct the superintendent of the state board of

health to do, or cause to be done, any or all the things mentioned in subdivisions three, four, five, six and seven of this section.

362. Salary of superintendent. [Ch. 96, '95.] § 6. The superintendent of the state board of health shall be paid five dollars per day for each day necessarily employed, and the sum of five cents per mile for every mile actually and necessarily traveled, and such other sum or sums as he may necessarily pay or become liable to pay in the performance of his official duties. *Provided*, that for the official books, papers and records needed by him, and such circulars and blanks as may be required for the proper conduct of the business of his office, he shall receive not to exceed the sum of one hundred dollars in any one year. The accounts of the superintendent for his mileage and said other expenses of his office, shall be audited by said state board of health, and the same, together with his salary, shall be paid out of the state treasury. *Provided*, That said board shall not in any case be allowed any more than the amount appropriated therefor by the legislature.

363. Compensation of officers. [Ch. 96, '95.] § 7. The officers, other than the superintendent or president, shall receive no compensation for their services, but they shall receive five cents for every mile necessarily traveled in attending to their official duties, and they, also, shall receive pay for all necessary expenses incurred while acting officially as members of the state board of health.

364. Meeting of state board — county boards — how appointed. [Ch. 96, '95.] § 8. At the first meeting of the state board of health which shall not be more than thirty days after their appointment, the members thereof shall appoint two lawful physicians from each county, residents thereof, each for the term of two years, one of whom shall be named as superintendent, the other as vice-president, who with the state's attorney of the county from which they were appointed, shall constitute a county board of health. The state's attorney shall be president of such county board of health. *Provided*, That in counties where there are no resident physicians, the state board of health may provide for such county boards under such rules and regulations as they may deem proper.

365. Vacancy in county board — how filled. [Ch. 96, '95.] § 9. Should a vacancy occur in any of the county boards of health from any cause other than the expiration of the time for which a member had been appointed, the superintendent of the state board of health shall, upon proper notification of such vacancy, proceed to appoint a proper person to fill the vacancy.

366. County boards to report to state board. [Ch. 96, '95.] § 10. The president of each county board of health shall preside at the meet-

ings thereof. The superintendent of the county board of health shall be ex-officio secretary of the board of health of his county, and shall keep a record of all the proceedings of the board, and of his official acts, and shall at the end of every month make a full report in writing to the superintendent of the state board of health of the proceedings of the county board of health, and of his official acts, and of the condition of the public health, and whenever any contagious or infectious disease occurs in his county shall immediately report the same to the superintendent of the state board of health.

367. Meetings of county board — organization of. [Ch. 96, '95.] § 11. The several county boards of health shall meet at the county seat of their respective counties, at such time within thirty days after the appointment of the superintendent of the county board of health as he may designate; notice of time and place of meeting shall be given by him to the other members of the county board, at least five days prior to such meetings, and thereafter such county board shall meet at the county seat as often as deemed necessary by the superintendent of the county board of health.

368. Powers of county board. [Ch. 96, '95.] § 12. The several county boards of health shall have power within their respective counties, subject to the supervisory control of the state board of health and the superintendent of the state board of health, to do and perform all the things mentioned in subdivisions two, three, four, five and six of section five. All expenses actually and necessarily paid and incurred by the county boards of health in carrying out the provisions of this act shall be audited by such board and certified to the county commissioners of the county where such expenses are incurred and shall be paid the same as other county expenses.

369. Superintendent of county board to have supervision. [Ch. 96, '95.] § 13. The superintendent of the county board of health shall have charge of and superintend, subject to the approval of the board of which he is a member, and the supervisory control of the state board of health, all the matters and things mentioned in subdivisions three, four, five and six of section five, within his county and in case of immediate danger to the health of persons he may act as in his judgment he may deem proper without consultation with the county board of health, for the prevention of such danger, and he shall immediately report such action to the president of the county board of health, and to the superintendent of the state board of health.

370. Compensation of county boards. [Ch. 96, '95.] § 14. The president of the county board of health shall receive no other compensa-

tion than that which is provided for; shall receive five cents for every mile actually and necessarily traveled in the performance of his duties as a member of such board. The superintendent of the county board of health shall receive five cents per mile for every mile actually and necessarily traveled in the performance of his duties, and such other sums as the commissioners may allow, not to exceed the sum of one hundred dollars in any one year, and he shall receive such other sum or sums as he may necessarily pay or become liable to pay in carrying out and performing the various duties imposed upon him under the provisions of this act, or by the county board of health, all of which accounts for services, mileage and other expenses, shall be audited by the county board of health and certified to the county commissioners of the county and paid as other county expenses.

371. Report to governor — to contain what. [Ch. 96, '95.] § 15.

The superintendent of the state board of health shall on the first day of December, eighteen hundred and ninety-six, and biennially thereafter, make a full report to the governor and the legislature of the state of South Dakota, which report shall show all that has been done by the state board of health, and by the superintendent of the state board of health during the two years preceding such report, and he shall also report a full statement of all expenditures by said board of health, and in each of the organized counties in this state by the county board of health, and shall also report such recommendations as he may deem advisable for the better protection of public health, and the prevention and cure of contagious and infectious diseases.

372. Penalty for violation of rules. [Ch. 96, '95.] § 16. Any person violating any of the provisions of this act or any of the rules or regulations made by said state board of health, to carry out any of the provisions of this act, or any person who shall prevent or attempt to prevent any of the officers of the state board of health or any of the officers of the several county boards of health or any person employed by them or either of them, from performing any of the duties prescribed in this act, or any of the rules and regulations made and prescribed by the state board of health or by the county boards of health or any practicing physician or other person who shall fail to report to the superintendent of the county board of health the existence of any contagious or infectious disease, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment, in the discretion of the court.

PRACTICE OF MEDICINE.

373. Must have license from state board of health — where recorded. [Ch. 133, '93.] § 1. It shall be unlawful for any physician or any other person to practice medicine, surgery or obstetrics in any of their departments in the state, unless such person shall have received a license to practice medicine from the board of health, as hereinafter provided, and shall have had the same recorded in the office of the register of deeds in the county where such physician or person shall reside.

374. Present practitioners not affected. [Ch. 133, '93.] § 2. Nothing in this act shall affect those now in the lawful practice of medicine, surgery or obstetrics in this state.

375. Not applicable to whom. [Ch. 133, '93.] § 3. Nothing in this act shall be construed to prohibit students from prescribing under the supervision of preceptors, or to prohibit gratuitous services in case of emergency, nor shall this act apply to commissioned surgeons in the United States army and navy.

376. Penalty for violation. [Ch. 133, '93.] § 4. Any person who shall violate any of the provisions of this act, or any person who shall practice medicine without having obtained a license as herein provided, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or imprisonment in the county jail for a term not exceeding thirty days or by both such fine and imprisonment, in the discretion of the court.

377. Board of examiners — qualifications of applicants — fees — license. [Ch. 133, '93.] § 5. The board of health of this state is hereby constituted a board of public examiners ex officio for the purpose of examining and licensing physicians to practice medicine in this state, and any person who is a graduate of a lawful medical college who has attended three full courses of medical lectures of six months each, no two full courses within the same year, and who is of good moral character, and is not an habitual drunkard, shall, upon proof of such facts to the superintendent of the state board of health as said board shall require, and on the payment of a license fee of five dollars, which shall be applied as a part of the superintendent's salary, receive from said superintendent of the state board of health a license certifying the applicant to be a practicing physician and qualified for such as prescribed by this section; which license shall be recorded in the office of the register of deeds in the county where such practicing physician resides.

Provided, That the requirements of the three courses of lectures shall not apply to those who had graduated prior to the passage of this act.

378. Board may cancel license — when. [Ch. 133, '93.] § 6. The state board of health shall, upon complaint made to it on oath by one responsible person, have power to cancel any license that may have been issued to any applicant for the practice of medicine when such license was fraudulently obtained, or when the person to whom such license was issued is an habitual drunkard, or is guilty of immoral practices or gross unprofessional conduct. *Provided*, That such license shall not be cancelled except after a hearing before such board of health at which a majority of such board shall be present, and of which the person holding the license to be cancelled shall have had not less than ten days' notice, and only upon due proof of the facts stated in the complaint, and *Provided, further*, That an appeal may be taken to the circuit court of the county in which the person whose license is cancelled lives, by any person aggrieved thereby, in the same manner as is now provided by law in case of appeal from the decision of county commissioners.

379. Duty of state's attorney. [Ch. 133, '93.] § 7. It shall be the duty of the state's attorney to prosecute all violations of this act within his county.

OSTEOPATHY.

379a. Who may practice. [Ch. 118, '99.] § 1. Any person holding a diploma from a legally incorporated and regularly conducted school of osteopathy of good repute as such, and wherein the course of study comprises a term of twenty months, or four terms of five months each, in actual attendance at such school, and shall include instruction in the following branches, to-wit: Anatomy, physiology, chemistry, histology, pathology, gynecology, obstetrics, and theory and practice of osteopathy, shall upon the presentation of such diploma to the state board of health, and satisfying such board that they are the legal holders thereof, be granted by such board a certificate permitting such person to practice osteopathy in the state of South Dakota, upon payment to the said board of a fee of ten dollars, which certificate shall be

recorded by the register of deeds of the county in which the holder desires to practice, for which he shall receive a fee of one dollar.

379b. Authority. [Ch. 118, '99.] § 2. The certificate provided for in the foregoing section shall not authorize the holder thereof to prescribe, or use, drugs in his practice, nor to perform major, or operative, surgery.

379c. Penalty for fraud. [Ch. 118, '99.] § 3. Any person who for the purpose of securing such certificate shall falsely represent himself, or herself, to be the legal holder of any such diploma, shall be deemed guilty of a misdemeanor, and on conviction be fined not less than one hundred, nor more than five hundred, dollars.

379d. Certificate revoked. [Ch. 118, '99.] § 4. Any certificate may be revoked by the state board of health upon satisfactory proof of fraudulent misrepresentations in procuring the same, or for any violations of the provisions of the certificate, and for any gross immorality by the holder thereof.

379e. Not practice of medicine. [Ch. 118, '99.] § 5. The system, method, or science of treating diseases of the human body, commonly known as osteopathy, is hereby declared not to be the practice of medicine within the meaning of section fourteen, chapter sixty-three, of the laws of eighteen hundred and eighty-five of the territory of Dakota, being section two hundred and five of the compiled laws.

379f. Certificate required. [Ch. 118, '99.] § 6. Any person practicing or attempting to practice osteopathy without first having obtained and filed the certificate above provided for, shall be deemed guilty of a misdemeanor and on conviction be fined not less than one hundred dollars nor more than five hundred dollars.

379g. Penalty. [Ch. 118, '99.] § 7. Any person practicing osteopathy who violates the provisions of section two of this act shall be deemed guilty of a misdemeanor and on conviction be fined not less than one hundred dollars nor more than five hundred dollars, and in addition to such fine have his or her certificate, provided for in section one, revoked.

ARTICLE 5. BOARD OF DENTAL EXAMINERS.

380. Practice of dentistry. It shall be unlawful for any person to engage in the practice of dentistry in this state unless he or she shall have obtained a certificate as herein provided. [C. L. 208.]

381. Board of examiners. A board of examiners to consist of five practicing dentists is hereby created, whose duty it shall be to carry out the purposes and enforce the provisions of this act. The members of said board shall be appointed by the governor, who shall select them from ten candidates whose names shall be furnished him by the "South Dakota dental society," and the "Northwestern dental association." Each shall furnish the names of five candidates, and the governor shall select at least two from each five names so furnished, to be members of said board. The term for which the members of said board shall hold their offices shall be five years, and until their successors shall be duly appointed. In case of a vacancy occurring in said board, such vacancy shall be filled by the governor from names presented to him by the "Northwestern association," and the "South Dakota Dental Society." It shall be the duty of the said dental organization to present twice the number of names to the governor of those to be appointed. [C. L. 209.]

382. Officers. Said board shall choose one of the members president and one the secretary thereof, and it shall meet at least once in each year, and as much oftener and at such times and places as it may deem necessary. A majority of said board shall at all times constitute a quorum, and the proceedings thereof shall, at all reasonable times, be open to public inspection. [C. L. 210.]

383. Dentists must register. Within six months from the time this act takes effect, it shall be the duty of every person who is at that time engaged in the practice of dentistry in this state to cause his or her name and residence, or place of business, to be registered with said

board of examiners, who shall keep a book for that purpose. The statement of every such person shall be verified under oath before a notary public or justice of the peace, in such manner as may be prescribed by the board of examiners. Every person who shall so register with said board, as a practitioner of dentistry, may continue to practice the same as such without incurring any of the liabilities or penalties provided in this act, and shall pay to the board of examiners for such registration a fee of one dollar. It shall be the duty of the board of examiners to forward to the register of deeds of each county in the state, a certified list of the names of all persons residing in his county who have registered in accordance with the provisions of this act; and it shall be the duty of all registers of deeds to register such names in a book to be kept for that purpose. [C. L. 211.]

384. Examination of practitioners. Any and all persons who shall so desire, may appear before said board at any of its regular meetings and be examined with reference to their knowledge and skill in dental surgery, and if the examination of any such person or persons shall prove satisfactory to said board, the board of examiners shall issue to such persons as they shall find to possess the requisite qualifications a certificate to that effect, in accordance with the provisions of this act. Said board shall also indorse, as satisfactory, diplomas from any reputable dental college, when satisfied with the character of such institution, upon the holder of such diploma furnishing evidence satisfactory to the board of his or her right to the same. All certificates issued by said board shall be signed by its officers, and such certificates shall be prima facie evidence of the right of the holder to practice dentistry in the state of South Dakota. [C. L. 212.]

385. Penalty. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction may be fined not less than fifty dollars, nor more than two hundred dollars, or be confined six months in the county jail. All fines received

under this act shall be paid into the common school fund of the county in which said conviction takes place. [C. L. 213.]

386. Fee for examination. In order to provide the means for carrying out and maintaining the provisions of this act, the said board of examiners may charge each person applying to or appearing before them for examination for a certificate of qualification, a fee of two dollars, which fee shall in no case be returned. And out of the funds coming into the possession of the board, from the fees so charged, the members of said board may receive, as compensation, the sum of five dollars for each day actually engaged in the duties of their office, and all legitimate and necessary expenses incurred in attending the meetings of said board. Said expenses shall be paid from the fees and penalties received by the board under the provisions of this act, and no part of the salary or other expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of said per diem, allowance and other expenses above provided for, shall be held by the secretary of said board as a special fund for meeting the expenses of said board and carrying out the provisions of this act, he giving such bonds as the board shall from time to time direct; and said board shall make an annual report of its proceedings to the governor, by the fifteenth of December of each year, together with an account of all moneys received and disbursed by them pursuant to this act. [C. L. 214.]

387. Certificate to be recorded. Any person who shall receive a certificate of qualification from said board, shall cause his or her certificate to be registered with the register of deeds of any county or counties in which such persons may desire to engage in the practice of dentistry; and the registers of deeds of the several counties in this state shall charge for registering such certificates a fee of twenty-five cents for such registration. Any failure, neglect, or refusal on the part of any person holding such certificate to register the same with the register of deeds as above directed, for a period of six months, shall work a forfeiture of the certificate; and no certificate when once forfeited shall be restored except upon the payment to the said board of examiners of the sum of twenty-five dollars, as a penalty for such neglect, failure, or refusal. [C. L. 215.]

388. Penalty for false pretenses. Any person who shall knowingly and falsely claim or pretend to have or hold a certificate of license, diploma, or degree, granted by any society, or who shall falsely and with intent to deceive the public, claim or pretend to be a graduate from any incorporated dental college, not being such graduate, shall be deemed guilty of a misdemeanor, and shall be liable to the same penalty as provided in section two hundred and thirteen. [C. L. 216.]

ARTICLE 6. BOARD OF PHARMACY.

389. Name of association — board of pharmaceutical examiners — how appointed. [Ch. 132, '93.] § 1. The registered pharmacists in this state are hereby constituted an association under the name and title of the South Dakota Pharmaceutical Association, the purpose of which shall be to improve the science and art of pharmacy, and to restrict the sale of medicines to regularly educated and qualified persons, as provided in this act. Said association shall hold its first annual meeting under the provisions of this act at Yankton on the first Wednesday in August, eighteen hundred and ninety-three, and annually thereafter at such time and place as may be determined by the said association. The South Dakota Pharmaceutical Association shall report annually to the governor recommending the names of at least three (3) members from the district in which the annual vacancy occurs, as persons qualified to be appointed upon said board, and the persons so appointed shall constitute the state board of pharmaceutical examiners for South Dakota, and shall hold their office for the term of three (3) years or until their successors are appointed and qualified. *Provided*, That each member of said board shall be a practicing pharmacist doing a retail drug business in this state. And, *provided, further*, That the appointments on said board shall be made by the governor on or before the first day of October in each year from among the members recommended by said association, one person from each pharmaceutical district, as now existing and the term of office for each member of said board shall be for three years. *Provided, further*, That the state board of pharmaceutical examiners as now constituted shall continue until their successors in office are appointed and qualified as provided further in this act. All other vacancies shall be filled by the governor from the nominees last submitted residing in the district where such vacancy occurs. *Provided, further*, That the state may be redistricted at any future annual meeting of the association, notice of the contemplated change having been sent to the members of the association by the secretary of the board at the same time notice of the annual meeting is mailed.

390. Secretary and treasurer — bond of — duties. [Ch. 132, '93.] § 2. The secretary and treasurer of the South Dakota Pharmaceutical Association shall each respectively be secretary and treasurer of the board of pharmacy and they shall each give such bonds as the association may require. The secretary shall pay over to the treasurer all moneys that shall come into his hands as such secretary, and the treasurer shall disburse the same only on order of the president of the association countersigned by the secretary. It shall be the duty of the board to exam-

ine all applications for registration submitted in due form as provided in the rules and regulations of the board, to grant certificates of registration to such persons as may be entitled to the same under the provisions of this act, and each member of the board shall investigate all charges brought to his notice in his district, and if in his judgment the charges can be sustained, shall make complaint to the proper prosecuting officer.

391. Meetings of board — reports — examination and registration of applicants. [Ch. 132, '93.] § 3. The board shall hold meetings for the examination of applicants for registration and the transaction of such other business as shall pertain to its duties, at such times and places as the South Dakota Pharmaceutical Association may direct. *Provided*, That special meetings of the board may be held whenever it shall be deemed necessary by a majority of the members thereof. It shall be the duty of the board to report annually to the governor and to the South Dakota Pharmaceutical Association upon the condition of pharmacy in this state, which said report shall also furnish a record of the proceedings of the said board for the year and also the names of all the pharmacists duly registered under this act. Said board shall have power to make by-laws and regulations for the proper fulfillment of its duties under this act and shall keep a book of registration in which shall be entered the names and places of business of all persons registered under this act, which book shall also specify such facts as such person shall claim to justify their registration. Two (2) members of said board shall constitute a quorum.

392. Who may become a registered pharmacist. [Ch. 150, '95; ch. 132, '93.] § 4. Any person of good moral character and temperate habits who shall pass a satisfactory examination before the state board of pharmacy shall be entitled to a certificate of registration as a licentiate of pharmacy: *Provided*, That nothing in this act shall be construed to invalidate any certificate of registration now in force in this state.

393. Qualifications — certificate of registration. [Ch. 132, '93.] § 5. Licentiates in pharmacy shall be such persons, not less than eighteen years of age, who have had three years' experience in the practice of pharmacy or who shall hold a diploma from such medical college as shall be approved by the board, and have passed a satisfactory examination before the state board of pharmacy herein mentioned. The said board may in their discretion, grant certificates of registration to

such persons as shall furnish with their application satisfactory proof that they have been registered by examination in some other state. *Provided*, That such other state shall require a degree of competency equal to that required of applicants in this state, and said board may also in their discretion under such rules and regulations as may be made by them, issue to applicants for an examination temporary certificates which shall be valid only until the next regular meeting of the board.

394. Assistant pharmacist — qualification of. [Ch. 132, '93.] § 6. Any person shall be entitled to registration as assistant pharmacist who is of the age of eighteen years, of good moral character, temperate habits and has had two years of experience in the practice of pharmacy under a registered pharmacist and shall pass an examination before the state board of pharmacy that shall show competency or qualification equal to such experience or who shall hold a certificate of registration as such assistant from the South Dakota board of pharmacy at the time this act takes effect. Any registered assistant pharmacist shall have the right to compound medicines or sell poisons under the direct supervision of a registered pharmacist and he may take charge of a drug store or pharmacy during the temporary absence of the owner or manager thereof. *Provided*, That nothing herein shall be construed as giving such assistant authority to continuously perform any of the duties herein mentioned except under the supervision and in the presence of the manager.

395. Registration fee. [Ch. 132, '93.] § 7. Every person applying for registration as a registered pharmacist or registered assistant pharmacist, shall pay with his application five (\$5.00) dollars, and if upon examination, certificate be not granted the secretary shall refund to the applicant three (\$3.00) dollars.

396. Renewal of certificate. [Ch. 132, '93.] § 8. Every registered pharmacist or registered assistant pharmacist shall annually thereafter on such date as the South Dakota Pharmaceutical Association may determine pay to the secretary an annual registry fee to be fixed by the said association, which in no case shall exceed the sum of five dollars, for which he shall receive from the board of pharmacy a renewal of his certificate of registration. The failure of any registered pharmacist or registered assistant pharmacist to pay said fee within one year from the date of the expiration of his certificate, shall deprive him of the right of such renewal. Every certificate of registration or the renewal thereof granted under this act shall by the person to whom granted be posted in a conspicuous place in the pharmacy to which it applies.

397. Salary of secretary. [Ch. 132, '93.] § 9. The secretary of the association shall receive a salary which shall be fixed by the association. He shall also receive his traveling and other necessary expenses incurred in the performance of his official duties. The members of the board shall receive the sum of five (\$5.00) dollars for each day actually engaged in its service and all legitimate and necessary expenses incurred in attending the meetings of said board; said expenses shall be paid from the fees and penalties received by the association under the provision of this act.

398. Adulteration of drugs unlawful. [Ch. 132, '93.] § 10. No person shall add to or remove from any drug, medicines, chemical or pharmaceutical preparation any ingredient or material for the purpose of adulteration or substitution, which will alter the nature or composition of such drugs or other preparation. Any person who shall thus wilfully adulterate or alter, or shall sell or offer for sale any such adulterated or altered preparation or cause to be substituted one material for another with the intention to defraud or deceive the purchaser, shall be deemed guilty of a misdemeanor and be liable to prosecution under this act.

399. Unlawful to retail drugs. [Ch. 103, '97; ch. 132, '93.] § 11. That it shall hereafter be unlawful for any person other than a registered pharmacist to retail, compound or dispense drugs, medicines or poisons or to open or to conduct any pharmacy or store for retailing, compounding or dispensing drugs, medicines or poisons unless such person shall be a registered pharmacist within the meaning of this act, except as herein provided; and any person not being a registered pharmacist within the meaning of this act who shall keep a pharmacy or store for retailing or compounding medicines or who shall take, use or exhibit the title of a registered pharmacist shall be deemed guilty of a misdemeanor and for each and every offense shall be punished by a fine of not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) upon conviction thereof. Any registered pharmacist who shall permit the compounding or dispensing of prescriptions or the vending of drugs or poisons in his store or place of business except under the supervision of a registered pharmacist or except by a registered assistant pharmacist as herein provided; or any pharmacist or assistant who, while continuing in business shall fail or neglect to procure his annual registration, or any person who shall willfully make any false representations to procure registration for himself or any other person, shall be deemed guilty of a misdemeanor and punished by a fine of not

less than fifty dollars (550) nor more than one hundred dollars (\$100) upon conviction thereof. Provided, that nothing in this act shall apply to or in any manner interfere with the business of any physician or prevent him from supplying to his patients such articles as may seem to him proper, and, provided further, that no part of this section shall be so construed as to give the right to any physician to furnish any intoxicating liquors to be used as a beverage on prescription or otherwise.

400. Selling of poisons. [Ch. 103, '97; ch. 132, '93.] § 12. No person shall sell any poison named in schedule "a" by retail unless the box, bottle, wrapper or cover in which said poison is contained is distinctly labeled with the name of the article, the name and address of the person selling and the word "poison," and no person shall sell any poison named in schedule "b" to any person unknown to the seller, unless introduced by some person known to the seller, and on every sale the seller shall before delivery make entry on a book kept for that purpose stating the date of sale, the name and address of the purchaser, the name and quantity of the article sold, the purpose for which it is required and the name of the person, if any, who introduced them. Any person failing to comply with the requirements of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten dollars (\$10) nor more than twenty-five dollars (\$25) for every such omission.

401. Penalty for neglect of duty. [Ch. 132, '93.] § 13. Any member of the board of pharmacy or officer therein provided for, who shall wilfully neglect any of the duties provided for in this act, or who shall aid or abet any person in the evasion or violation of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifty (\$50.00) dollars for each and every offense, and any person violating any provision of this act shall be guilty of a misdemeanor and fined not less than fifty (\$50.00) dollars, unless otherwise provided in this act.

402. Board may revoke certificate — when. [Ch. 132, '93.] § 14. Whenever the board of pharmacy shall be satisfied that any person holding a certificate of registration is for any reason incompetent or disqualified to perform the duties of a registered pharmacist as contemplated by the provisions of this act they shall have power to revoke their certificate. *Provided, however,* That such certificate shall not be canceled except after a hearing before the said board at which a majority of its members shall be present and of which meeting the person holding the certificate to be cancelled shall have not less than ten days' notice, and then only upon due proof by examination or otherwise. *Provided, further,* That an appeal from the decision of said board may

be taken to the circuit court of the county in which the person whose certificate is canceled resides in the same manner as is now provided by law in cases of appeal from the decision of county commissioners.

403. Penalties inure to whom. [Ch. 132, '93.] § 15. All penalties collected under the provisions of this act shall inure to the South Dakota Pharmaceutical Association.

SCHEDULE "A."

Acetate of lead, paris green, oxalic acid, carbolic acid, chloral hydrate, chloroform, ether, sulphate of zinc, and other poisonous medicines fatal to human life in doses of from fifteen to sixty grains.

SCHEDULE "B."

Aconite, arsenic, belladonna, opium (except in paragoric and Dover's powders) and their preparations, strychnine, corrosive sublimate, prussic acid, cyanide of potassium, nitric and sulphuric acids, tartar emetic and other poisonous medicines, fatal to human life in doses of fifteen grains or less.

404. Persons holding diploma entitled to license — when. [Ch. 149, '95.] § 1. That any regular graduate over eighteen (18) years of age who has received a diploma for the pharmacy course in South Dakota Agricultural College and who has before or after graduation practiced pharmacy for one year under a regularly licensed druggist in South Dakota in a drug store where physicians' prescriptions are compounded, shall upon passing a satisfactory examination by the state board of pharmacy, receive from the state board of pharmacy of South Dakota a license entitling said applicant to practice pharmacy in any county of South Dakota; and said board shall grant said license to said applicant without unnecessary delay.

405. Examination. [Ch. 149, '95.] § 2. Any person who has made the following preparations shall be entitled to a druggist's license upon passing a satisfactory examination before the state board of pharmacy:

One year's work in said pharmacy course and two years' work in an accredited drug store.

406. Exceptions. The foregoing provisions of this act shall not apply to, or affect any person having five consecutive years' experience in the dispensing of and compounding of the prescriptions of regular practitioners, and employed as a pharmacist in South Dakota at the passage of this act, except only in so far as relates to registration and fees hereinafter provided for. [C. L. 223.]

BOARD OF PARDONS.

407. Creation of board. [Ch. 32, '90.] § 1. That there shall be a board of pardons, consisting of the presiding judge of the circuit court in which the conviction was had, the secretary of state and the attorney general. (See 5, A, 4, Constitution, p. 9.)

408. Sessions called by the secretary of state. [Ch. 32, '90.] § 2. That said board of pardons shall meet in open session whenever called together by the secretary of state at the office of the said attorney general.

409. Governor may grant pardon — when. [Ch. 32, '90.] § 3. That the governor shall have the power to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction for all offenses, except treason and cases of impeachment; *Provided*, That in all cases where the sentence of the court is capital punishment, imprisonment for life, or for a longer term than two years, or a fine exceeding two hundred dollars, (\$200) no pardon shall be granted, sentence commuted or fine remitted, except upon the recommendation in writing, with the reasons therefor, after a full hearing in open session of said board of pardons which recommendations of said board shall be filed in the office of the secretary of state.

410. Notice of application — what to contain and how served. [Ch. 32, '90.] § 4. Notice of the application for such pardon shall be given to the state's attorney of the county or his successor in office, who prosecuted the indictment of the person or persons so convicted and sentenced, at least (30) thirty days before said application shall be filed with the governor and with the secretary of state, who shall be clerk of said board of pardons. The service of such notice upon the state's attorney as aforesaid, shall be made and the return thereof certified in the same manner as now provided for in the service of summons in the circuit court, and such certificate of service shall accompany every such application to the governor and to the said board of pardons. A notice of such application, setting forth the name of the person on whose behalf it is made, the crime of which he shall have been convicted, the times of each conviction, and the term of imprisonment, shall also be published at least once a week for four successive weeks in some newspaper of general circulation in the county where the offense for which pardon is sought was committed, or, if there be no newspaper published therein, then such notice shall be posted in a conspicuous place on the door of the court house of such county for four successive weeks prior to the application. The affidavit of the publisher of the

paper or the person posting such notice, shall also accompany such application, showing that such notice has been published or posted (as) herein provided.

411. Conviction for treason. [Ch. 32, '90.] § 5. The governor shall have the power to suspend the execution of the sentence upon a conviction for treason until the case shall have been reported to the legislature at its next regular session, when the legislature shall either pardon or commute the sentence, direct the execution of the sentence or grant a further reprieve.

412. Annual report to the legislature. [Ch. 32, '90.] § 6. The governor shall annually communicate to the legislature, at each regular session such case of remission of fine, or reprieve, commutation, or pardon granted by him in the cases in which he is authorized to act without the recommendation of the said board of pardons, stating the name of the convict, the crime of which he is convicted, the sentence and its date, and the date of the remission, commutation, pardon or reprieve, with his reasons for granting the same.

413. State's attorney must furnish board of pardons with a statement of facts. [Ch. 32, '90.] § 7. When an application is made to the governor, or to the said board of pardons, for a pardon, he, or the said board may require the said state's attorney by whom the action was prosecuted, or his successor in office, to furnish him or them, without delay, with the statements of the facts proved on the trial, and of any other facts having reference to the propriety of granting the pardon.

414. Applications to be made in accordance with section four. [Ch. 32, '90.] § 8. All applications for pardon on behalf of any person or persons convicted in any court in this state, or any crime punishable under the laws thereof by imprisonment in the state prison and sentenced to such imprisonment shall be made and conducted in the manner prescribed in section four of this act.

415. Contest. [Ch. 32, '90.] § 9. Any person or persons feeling aggrieved by the application for any pardon may contest the same, and for that purpose may appear in person before the governor or the said board of pardons, during the consideration of such application, and show cause by written or oral testimony why such pardon should not be granted.

416. Governor and board of pardons may adopt rules. [Ch. 32, '90.] § 10. The governor and said board of pardons may in his, or they in their, discretion make such additional rules and regulations governing applications for pardons as may from time to time seem to him or to

them best, not in conflict with the provisions of this act. But the provisions of this act shall not apply to the applications for pardon to be granted within (30) thirty days before the time when the convict would otherwise be legally entitled to discharge.

417. Secretary of state custodian of pardon papers. [Ch. 32, '90.]

§ 11. 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 state, by whom they must be kept as records open to public inspection.

418. This act applicable. [Ch. 32, '90.] § 12. That this act shall apply to all cases of conviction under the laws of the state of South Dakota, and all cases for pardon now pending before the governor shall be heard by the governor or the board of pardons, as the case may be, without reference to the provisions to [of] section four of this act, when full and proper service of notice of the application for pardon has been made under section seven thousand six hundred of the compiled laws of the state of South Dakota.

BOARD OF EMBALMERS.

418a. Governor appoint. [Ch. 87, '99.] § 1. That the governor shall, as soon as practicable after the passage of this act, appoint the president and secretary of the state board of health, and three persons who shall be practical and practicing embalmers in this state, who shall constitute a state board of embalmers, one of whom shall always be a resident of the Black Hills section of this state. One of the embalmers so appointed shall hold office for three years, one for four years, and one for five years, unless sooner removed. Appointments to fill vacancies caused by death, resignation, or removal before the expiration of terms, shall be made for the residue of such terms by the governor; and all appointments to fill vacancies, caused by expiration of terms, shall be made in the same manner and shall be for a period of five years.

418b. Oath of office. [Ch. 87, '99.] § 2. The members of said board, before entering upon their duties, shall respectively take and subscribe the oath required by other state officers, which shall be filed in the office of the secretary of state, who is hereby authorized to administer the same. They shall have power to elect out of their own number a president, secretary and treasurer, and adopt such regulations for the transaction of business of the board, and the management of its affairs, as they may deem expedient. The members of said board shall receive no salary as such, except the secretary, who shall have fifty dollars per year for services; but the actual traveling and necessary expenses of the board and its members shall be paid, but only out of the receipts as hereinafter directed.

418c. Meetings of board. [Ch. 87, '99.] § 3. Said board shall meet at least once a year, and may also hold special meetings as frequently as the proper and efficient discharge of its duties shall require, at a time and place to be fixed by the rules and by-laws of the board;

and the rules and by-laws of the board shall provide for the giving of timely notice of all meetings to every member of the board and to all applicants for license. Three of the members shall, at any meeting, organize and constitute a quorum for the transaction of business.

418d. Examination. [Ch. 87, '99.] § 4. The members of this board, or such number thereof as shall be designated by said board, shall examine candidates for license on the subjects of embalming and care, disposition and preservation of deceased persons; also on the subject of sanitation for the prevention of the spread of infectious and contagious diseases, in accordance with the rules of the state board of health; and at least once each year an examination shall be held in the Black Hills if applicants there residing shall request it. And they shall adopt such rules and regulations for the disinfection of dead bodies, their bedding, clothes and surroundings, as they shall think proper, and shall cause such rules to be made known to every person engaged in the profession of embalming and the business of undertaker. And it is the intention that this board shall be an aid to the state board of health.

418e. License. [Ch. 87, '99.] § 5. Every person who wishes to practice the profession of embalming the bodies of persons having died of any infectious or contagious disease, in the state of South Dakota, or prepare for shipment the body of any person having died of any infectious or contagious disease, shall appear before the state board of embalmers, or such member thereof designated as hereinbefore provided, for examination on their knowledge of embalming, sanitation, preservation of the dead, disinfection of a diseased person and the apartments, bedding, clothing, excrete and anything likely to be affected in case of death from infectious or contagious disease, in accordance with the rules and regulations of the state board of health. Such examination shall be in writing, and all examination papers shall be kept on record by said state board of embalmers; and if the applicant be of good moral character and passes a satisfactory examination, then the said board shall issue to said applicant, on payment of the sum of five dollars to the treasurer of said board, a license to practice the profession of embalming for the term of one year. If the applicant desires a renewal of the license, the said board shall grant it except for cause, and the annual fee for renewal of license shall not exceed the sum of three dollars.

418f. Seal. [Ch. 87, '99.] § 6. Said board is hereby authorized to adopt and use a common seal, and any transcript of any matter of record in the office of said board, with the certificate of the secretary thereof attached, under the seal of said board, shall be competent evidence of such matter of record in any court in this state. All licenses shall be signed by a majority of the state board of embalmers and attested by its seal, and shall specify by name the person to whom issued. Every such license shall be non-assignable and non-transferable, and shall be displayed by such licensee in a conspicuous place in his or her office or place of business.

418g. Penalty. [Ch. 86, '99.] § 7. Any person who shall practice, or hold himself or herself out as practicing the art of embalming the dead in accordance with the provisions of section five of this act, without having complied with the provisions of said section five, shall be guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be sentenced to pay a fine of not less than fifty (50) dollars, or more than five hundred (500) dollars, or undergo an imprisonment not exceeding one year, or both, at the discretion of the court, for each and every offense, but the penalties of this section named shall not be enforced until after an examination of applicants has been held under the provisions of this act.

418h. Fees and fines. [Ch. 86, '99.] § 8. All fees collected and fines paid under the provisions of this act shall be paid to the treasurer of the state board of embalmers, to be used for the purpose of defraying the necessary expenses, and the treasurer of the state board shall give bond in the sum of five hundred dollars to the approval of said board for the honest and faithful discharge of his duties. It shall be the duty of said state board, on or before the first Monday in November of each and every year to make a report in writing to the governor of this state, containing a detailed statement of the nature of the receipts and the manner of expenditures; and any balance of money remaining at the end of the year after the payment of the necessary expenses, including the salary of the secretary and the traveling and other necessary expenses, of the members of the board, incurred in the discharge of their duties as such, may be used by the state board of embalmers for educational purposes in their profession.

CHAPTER 7. CHARITABLE AND EDUCATIONAL INSTITUTIONS.

SOLDIERS' HOME.

419. Institution created. [Ch. 114, '89.] § 1. That there be and is hereby created and established in this state an institution to be known as the South Dakota Soldiers' Home, and in accordance with the resolution adopted by the Grand Army of the Republic, department of South Dakota, at its fifth annual encampment, held at Redfield in March, eighteen hundred and eighty-eight, which was as follows, viz.: Whereas, we, the soldiers and delegates of the Grand Army of the Republic, assembled in annual encampment in Redfield, South Dakota, believing it is our duty to recommend a place for location of the soldiers' home, be it resolved, that we recommend the Hot Springs of South Dakota as the place, provided the home shall be guaranteed the free use of the springs.

Therefore, the said South Dakota Soldiers' Home shall be and is hereby located at the Hot Springs in Fall River county, state of South Dakota. *Provided*, that a tract of land of not less than eighty (80) acres, located at the said Hot Springs shall be donated to the state of South Dakota.

The said tract of land to be the one selected and approved of by a committee of the Grand Army of the Republic, appointed for that pur-

pose at the fifth annual encampment of that body, and to be conveyed to the state of South Dakota by a good and sufficient warranty deed accompanied by a good abstract of title which shall be approved by the attorney general of the state, showing that a perfect conveyance of title in fee simple has been made to the state of South Dakota, and also provided that the owners and proprietors of the waters known as the Hot Springs of South Dakota, shall by a good and sufficient contract guarantee to the state of South Dakota, to furnish for the use of any public building or buildings that may be erected on said granted land, all the water required for every purpose whatever.

And that all inmates of said soldiers' home or public building or buildings shall have free of all charges all the water that may be required for baths or bathing purposes from the best medical hot springs known to that section, so long as the said building or buildings shall be used as a public institution.

420. Object. [Ch. 114, '89.] § 2. The object of the South Dakota Soldiers' Home shall be to provide a home and subsistence for all honorably discharged soldiers, sailors and marines who have served in the army or navy of the United States, and who are disabled by disease, wounds, old age or otherwise; *Provided*, that no applicant shall be admitted to said home who has not been a resident of this state at least one year next preceding his application for admission therein; unless he served in a South Dakota regiment or company, or was accredited to the state of South Dakota.

The board of commissioners shall determine the eligibility of applicants for admission to said home as herein provided.

421. Use of same. [Ch. 114, '89.] § 3. Should there be a division of this state, and more than one state created therefrom, it is provided that any state that may hereafter be created from the present territory of Dakota shall have the privilege of using the said home for all honorably discharged soldiers, sailors or marines residing within the limits of said state until such time as the said state may provide themselves with a soldiers' home and upon such terms as will cover the actual expenses of maintaining such inmates.

And it is further provided that the bonds of the territory of Dakota issued for the construction of a soldiers' home shall be assumed and paid by the state that may hereafter be created from the present territory of Dakota in which the said soldiers' home may be located.

422. Bonds for buildings. [Ch. 114, '89.] § 4. To provide for the erection and completion of suitable buildings and fixtures, also for the furnishing and equipping of the same, the bonds of this state shall be issued to the amount of forty-five thousand dollars (\$45,000) in denomi-

nation of one thousand dollars (\$1,000) each, bearing date May first, anno Domini, eighteen hundred and eighty-nine, with interest payable semi-annually at financial agency in the city of New York or Boston, to be specified in said bonds, on the first day of July and January in each year, at a rate of interest not exceeding five (5) per centum per annum and running twenty (20) years from the first day of May, eighteen hundred and eighty-nine, such bonds to be executed for the state of South Dakota and under the seal thereof by the governor and treasurer and shall be attested by the secretary and shall be negotiated by the treasurer of the state, whose duty it shall be to receive sealed proposals for the purchase of said bonds, after giving notice of thirty (30) days in two newspapers of general circulation, one of which shall be published in the state and the other in the city of New York, and said bonds shall be sold to the highest bidder for cash; *Provided*, however, that the bonds, issued under the provisions of this act, shall not be sold for less than their par value.

423. Tax. [Ch. 114, '89.] § 5. For the purpose of prompt payment of principal and interest of the bonds herein provided there shall be levied by the state board of equalization at the time the other taxes are levied and collected, in the same manner as other state taxes are levied and collected, such sums as are sufficient to pay such interest and the exchange thereon as the same shall become due and twelve years after the said first day of May, eighteen hundred and eighty-nine, in addition thereto a sinking fund tax shall be annually levied sufficient to retire and pay said bonds at their maturity, and no tax or fund provided for the payment of such bonds, either principal or interest, shall at any time be used for any other purpose.

424. Appropriation. [Ch. 114, '89.] § 6. If for any reason the state treasurer shall not have in his hands sufficient of funds herein provided to pay either principal or interest upon such bonds when due he shall pay such principal and interest out of any other unappropriated fund belonging to the state, and there is hereby appropriated and set apart out of the general funds belonging to the state a sum sufficient to pay such interest on said bonds as may be due before the funds and tax herein provided can be made available, and it shall be the duty of said treasurer to pay said interest promptly and at the time it falls due, out of said funds; all moneys belonging to the general fund of the state applied by said treasurer in payment of either principal or interest of said bonds shall be replaced from the special tax herein provided.

425. Supervision. [Ch. 169, '95; ch. 114, '89.] § 7. The general supervision and government of said soldiers' home shall be vested in

a board of five (5) commissioners who shall be appointed by the governor, with the consent of the senate. No two of the said commissioners shall be from the same county, but all shall be ex-union soldiers, sailors or marines. The members of said board shall hold their office for the term of two for two years, two for four years, and one for six years from the first day of April next after their appointment. Appointments for any expiring term of any member or members of the board are to be made during the session of the legislature next preceding such expiration. In case of a vacancy in said board by death or otherwise, the governor shall immediately fill the vacancy for the unexpired portion of the term. No compensation shall be allowed any member of the board except the officers therein, save their actual expenses.

426. Commissioner's oath of office. [Ch. 169, '95; ch. 114, '89.] § 8. Before entering upon the duties of their office, each member of said board of commissioners shall take and subscribe the following oath: I do solemnly swear that I will support the constitution of the United States and the constitution of the state of South Dakota, and will faithfully discharge the duties of commissioner of the South Dakota Soldiers' Home to the best of my ability, so help me God.

427. Annual meeting. [Ch. 114, '89.] § 17. It shall be the duty of the board of commissioners to meet annually, the first Tuesday in June of each year, and at such annual meeting they shall elect from their own body a president, treasurer and secretary, whose compensation shall be determined by the board, and who shall hold their office for one year or until their successors shall be elected and qualified. The treasurer shall give a bond which shall be approved by the board of commissioners for double the amount of money that would be liable to come into his hands at any one time. The board of commissioners shall have four regular meetings in each year and not to exceed two special meetings, and shall have power to adopt a seal and make rules and regulations not inconsistent with the laws of the state, organic act or the constitution of the United States, for the management and government of said soldiers' home, including such rules as they shall deem necessary for the preservation of order, enforcing discipline and preserving the health of its inmates.

The board of commissioners shall make full and minute report of the disbursements of the home and its condition, financial and otherwise, to each regular session of the general assembly.

428. Powers and duties of board of commissioners. [Ch. 169, '95; ch. 114, '89.] § 18. The board of commissioners shall have power, and it shall be their duty to appoint a commandant for said home who

shall serve during the pleasure of said board, and who shall be one who was honorably discharged from the military or naval service of the United States, and who served in the war of the rebellion of eighteen hundred and sixty-one and eighteen hundred and sixty-five, whose salary shall not exceed one thousand dollars (\$1,000) per annum. And said commandant shall nominate, subject to the approval of the board of commissioners, all necessary subordinate officers, who, as far as practicable, shall all be persons either honorably discharged from the service of the United States, as soldiers, sailors or marines, or the wives or widows of such soldiers, sailors or marines. All appointees provided for in this section shall be subject to removal by the commandant for inefficiency or misconduct, but in case of removal the commandant must make a detailed statement of the cause of such removal to the board of commissioners, who shall have power, in their discretion, to reinstate such persons. The compensation of all subordinate officers shall be fixed by the board of commissioners. [As amended. In force March 4, 1895.]

429. Majority — record. [Ch. 114, '89.] § 19. Every contract and duty to be performed by said commissioners must receive the approval of the majority of the board in regular session duly called in order to make binding and valid. That all proceedings of said board shall be recorded in a book kept for that purpose, and open to the inspection of any body on request.

ARTICLE 1. HOSPITAL FOR INSANE.

430. Hospital located. The South Dakota Hospital for the Insane, until otherwise provided by law, is hereby established on the southeast quarter of section number thirty-six, in township number ninety-four north, of range number fifty-six west, in the county of Yankton, near the city of Yankton. [C. L. 233.]

432. Object. The object of the said hospitals for the insane shall be to receive and care for all insane or distracted persons residing within its jurisdiction, as limited and prescribed in this act, who may be committed to their care in accordance with law, and to furnish all needed medical treatment, seclusion, rest, restraint, attendance, amusement, occupation and support which may tend to restore their health and recover them from insanity or to alleviate their sufferings; *provided*, that the trustees shall have power to discharge patients and to refuse additional applications for admission to the hospital under their care, whenever in their judgment the interests of the insane demand such discharge or refusal; and that in the admission and attention of patients,

curables and recent cases shall have the preference over cases of long standing, and that violent, dangerous or otherwise troublesome cases shall have preference over those of an opposite description. [C. L. 236.]

433. Trustees may take lands. The board of trustees of each hospital may take in the name of the state and hold in trust for the hospitals, any lands conveyed or devised, and any money or personal property given or bequeathed, to be applied for any purpose connected with either institution; *provided*, they shall not have power to bind the state by any contract, beyond the amount of the appropriation which may at the time have been made for the purpose expressed in the contract, nor to sell or convey any part of the real estate belonging to said hospitals without the consent of the legislature, except that they may release any mortgage or convey any real estate which may be held by them as security for any money or upon any trust, the terms of which authorize such conveyance. No trustee or officer of either hospital shall be either directly or indirectly interested in any contract for the purchase of building material, supplies or other articles for the use of the institution. They shall provide and keep a seal upon which shall be inscribed the name of the hospital, with such other words and devices as they may deem appropriate. [C. L. 237.]

436. Fiscal year — meetings. The fiscal year of the hospital shall close on the thirtieth day of November each year, and the annual meeting of the boards of trustees respectively shall be held on the first Wednesday of December thereafter at the hospital. Special meetings for the appointment or removal of resident officers, or for the transaction of general business, may be held upon the written request of the president or any three members of the board. Three members of the board shall constitute a quorum for the transaction of business. [C. L. 240.]

See § 556 et seq.

439. Bond and oath of superintendent. The superintendent of the hospital shall before entering upon the duties of his office give a bond to the state of South Dakota in the penal sum of twenty-five hundred dollars, conditioned that he will faithfully and impartially discharge the duties of his office according to law and the by-laws of said hospital, to be approved by said board, and take and subscribe an oath faithfully and diligently to discharge the duties required of him by law and the by-laws of the board of trustees, which bond and oath shall be filed with the treasurer of the state; he shall be the chief executive officer of the hospital, and have entire control of the medical, moral and dietetic treatment of the patients; he shall employ all employes and assistants necessarily connected with the institution, below the grade designated as officers in section two hundred and forty-one, and may discharge any em-

ploye at will, and suspend any resident officer of the hospital, except steward, being responsible to the board for the proper exercise of that duty in regard to officers. [C. L. 243.]

440. Duties of steward. The steward shall keep the accounts, pay those employed in and about the hospital, and have a personal superintendence of the farm, garden and grounds, and perform such other duties as may be assigned him under the by-laws of the hospital, under the direction of the board of trustees; he shall purchase all supplies for the hospital wherever the best grade of articles in suitable quantities can be bought at the lowest price, and, so far as practicable, in large rather than in small quantities; and shall, if in his judgment it can be done to advantage, advertise for proposals for staple supplies, such as meat, flour, sugar, coffee, tea, fuel and other staple articles and make contracts for the furnishing of the same, in bulk or in quantity as may be needed for use. [C. L. 244.]

441. Accounts by steward. The steward shall keep an accurate account of all receipts and expenditures in detail, which shall be open to the inspection of the superintendent and board of trustees, and these accounts shall be carefully balanced on or before the fifteenth day of each month, and closed biennially on the thirtieth day of November next preceding each regular session of the legislature. There shall be provided and submitted for the inspection of the superintendent and board of trustees, on or before the fifteenth day of each month, an original and duplicate balance sheet, which balance sheet shall show the balance of appropriations in the state treasury to be applied to the maintenance of the patients or, to the general use of the hospital, or from any source whatever. These balance sheets shall also show a detailed statement of all receipts and disbursements during the month, and to what appropriation each belongs, together with the name of each payee and the price paid. There shall be submitted with the balance sheet the original bills of purchase, vouchers for the same and receipts of all other disbursements of whatever kind, which bills of purchase, vouchers and receipts shall have endorsed on the back of each the signatures attached thereto, with the month and year of payment. After the original duplicate balance sheets have been endorsed as correct by the superintendent and president of the board of trustees, the steward shall within five days thereafter file the original balance sheet in the office of the superintendent, and the duplicates thereof with the original bills of purchase; vouchers and receipts pertaining thereto he shall file in the office of the state auditor, and upon the presentation of the monthly balance sheet, properly signed and endorsed as correct by the president of the board of trustees, together with the original bills of purchase, vouchers and re-

ceipts pertaining thereto, the state auditor shall draw his warrants upon the state treasurer for the respective amounts therein stated, from the appropriations to which they are properly chargeable. [C. L. 245.]

442. New buildings. Whenever any additional building is to be erected, or extensions or alterations or repairs are to be made in connection with either hospital, the board of trustees shall have authority to procure all necessary plans, drawings and specifications for such buildings, alterations or repairs, to advertise for proposals for the erection and completion thereof, and to accept such bid as may seem to them most advantageous, the contractor in every case to give adequate security for the faithful performance of his contract, to appoint and discharge a building superintendent who shall superintend the work, and perform such other duties in that respect as they may require, and to fix his compensation, and to examine and certify to the correctness of his estimates and accounts for work under the contract, and of the superintendent and the employes. [C. L. 246.]

443. Appropriations not to be diverted. No portion of any special appropriation for the erection of any building or for the doing of any work or for any purpose other than ordinary expenses shall be drawn from the state treasury in advance of the work done or the material furnished, and then only upon proper estimates thereof, approved by the trustees, and no portion of any appropriation for any purpose shall be drawn from the treasury before it shall be required for the purpose for which it is made, and no appropriation which is or may be made for one purpose shall be drawn or used for any other purpose, and if at any time hereafter the sum appropriated by the legislative assembly for any specific purpose shall be found insufficient to complete and accomplish the purpose for which said appropriation is made, then no part of the said sum so appropriated shall be expended or drawn from the state treasury, nor shall any liability on the part of the state be created on account of said appropriation. [C. L. 247.]

444. Patients. All residents of the state of South Dakota, who are or may become inmates of either hospital, shall receive their board, tuition and treatment free of charge during their stay. The residents of other states or territories may be admitted to said hospitals upon the payment of the first cost of said board, tuition and treatment as provided by the by-laws adopted by the board of trustees; *provided*, that no resident of another state or territory shall be received or retained to the exclusion of any resident of any part of the state of South Dakota; and, *provided, further*, that should any inmate be unwilling to accept gratuitous board, treatment or tuition, then the superintendent of the hospital is hereby authorized to receive pay therefor, and is required to account for the

same in an itemized monthly statement to the trustees, as donations to be duly credited to the persons from whom they were received, and if the superintendent shall receive any money for the purpose of furnishing extra attention and comforts to any inmates of the hospital he shall account for the same and for the expenditures in like manner to the trustees. [C. L. 248.]

445. Care of patients to be impartial — exceptions. All patients in the hospital shall be regarded as standing on an equal footing; and the several patients, according to their different conditions of mind and body and their respective needs, shall be provided for and treated with equal care; *provided*, that if the relatives or immediate friends of any patient shall desire it, and pay the expenses thereof, such patient may have special care and may be provided with a special attendant, as may be agreed upon with the superintendent. In such cases the charges for such special care and attendance shall be paid quarterly in advance. The relatives or friends of any patient in the hospital shall have the privilege of paying any portion or all of the expenses of such patient therein, and the superintendent shall cause the account of such patient to be credited with any sums so paid. [C. L. 249.]

446. Preference in receiving patients. If at any time it may become necessary for want of room or other cause, to discriminate in the general reception of patients into the hospital, a selection shall be made as follows:

1. Recent cases, *i. e.*, cases of less than one year's duration.
2. Chronic cases, *i. e.*, when the disease is of more than one year's duration, presenting the most favorable prospects for recovery, shall be next preferred.
3. Those for whom application has been longest on file, other things being equal, shall be next preferred.
4. When cases are equally meritorious in all other respects, the indigent are to be preferred. [C. L. 250.]

447. Escape of patient — proceedings. If any patient shall escape from the hospital the superintendent shall cause immediate search to be made for such patient, and if the patient cannot be found, he shall cause notice of such escape to be forthwith given to the commissioners of insanity of the county where the patient belongs; and if such patient is found in the county, the commissioners shall cause him or her to be returned, and shall issue their warrant therefor as in other cases, unless the patient shall be discharged, or unless for good reasons they shall relieve the relatives from any part or all of such burden, as may seem to them reasonable and just. [C. L. 251.]

448. Discharge, when cured. Any patient who is cured shall be immediately discharged by the superintendent. Upon such discharge the superintendent shall furnish the patient, unless otherwise supplied, with suitable clothing, and a sum of money not exceeding twenty dollars, which shall be charged with the other expenses, in the hospital, of such patient. The relatives of any patient not susceptible of cure by medical treatment in the hospital, and not dangerous to be at large, shall have the right to take charge of and remove such patient on consent of the board of trustees; *provided*, that in the interim of the meetings of the board the consent of two of the trustees shall be sufficient. [C. L. 252.]

449. Discharge before cured. On application of the relatives or immediate friends of any patient in the hospital who is not cured, and who cannot be safely allowed to go at liberty, the commissioners of insanity of the county where such patient belongs, on making provision for the care of such patient within the county as in other cases, may authorize his or her discharge therefrom; *provided*, that no patient who may be under charge or conviction of homicide shall be discharged without the order of the board of trustees. [C. L. 253.]

450. Discharge without application. When patients are discharged from the hospital by the authorities thereof, without application therefor, notice of the order of discharge shall at once be sent to the commissioners of insanity of the county where they belong, and the commissioners shall forthwith cause them to be removed, and shall at once provide for their care in the county, as in other cases, unless such patients are discharged as cured. And if the said commissioners of such county where the said patient belongs fail or neglect to take and remove such patient so discharged, as provided in this section, within thirty days from the date of the order discharging him, and of the notice of the order so sent, the said county where said patient belongs shall be liable for and pay to the state of South Dakota at the rate of two dollars per day for the care and keeping of such patient at the said hospital; such time for said keeping to be computed and commence thirty days after the date of said order and notice. It shall be the duty of the superintendent of said hospital to report any and all such delinquencies, and the time of any and all patients so kept beyond such time aforesaid, giving the names thereof, the county where the said patient or patients belong, the amount due from such county for such charge, to the governor of the state, for the year ending on the thirtieth day of November of each year. It shall be the duty of the state board of equalization to include and charge said amount or amounts so reported as aforesaid to each county or counties so named, and the same shall be included and made a part of the tax levied against such county

or counties, in addition to the amount so levied by said board for state purposes. [C. L. 254.]

451. Attorney general to bring suit. Upon the report of the superintendent, provided in section two hundred and fifty-four, it shall be the duty of the attorney general to bring suit against the county so indebted, for the amount due the territory, and any judgment obtained in such action may be enforced as other judgments against counties are enforced. [C. L. 255.]

452. Superintendent — when not responsible for reception. The warrant of the commissioners of insanity authorizing the admission of any person to the hospital as a patient, accompanied by a physician's certificate as herein provided, shall operate to shield the superintendent and other officers of the hospital against all liability to prosecution of any kind, on account of the reception and detention of such persons in the hospital, provided such detention shall be otherwise in accordance with the laws and by-laws regulating its management. [C. L. 256.]

453. Hospital seal. The superintendent shall affix the seal of the hospital to any notice, order of discharge, report, or other paper required to be given or issued by him. [C. L. 257.]

454. Blanks. The trustees of the hospital shall provide for furnishing the commissioners of insanity of the counties entitled to send patients to the hospital, with such blanks for warrants, certificates, et cetera, as will enable them with regularity and facility to comply with the provisions of the law, and also with copies of the by-laws of the hospital, when printed. [C. L. 258.]

455. Prohibiting use of certain lands for burying ground. It shall be unlawful for any person or persons to use any portion of section thirty-six, township ninety-four, range fifty-six, as a burying ground, or to bury any dead body thereon, and any person or persons violating or causing any other person to violate the provisions of this section shall be guilty of a misdemeanor. [C. L. 259.]

456. Removal of patients. The boards of commissioners of insanity in each organized county lying north of the forty-sixth parallel of latitude, and in each county in which the greater portion shall be north of said parallel, shall transact all business arising under this article with the trustees and officers of the North Dakota Hospital for the Insane. The boards of commissioners of all organized counties south of the above described territory, shall transact all business with the South Dakota Hospital for the Insane at Yankton; and the territory of Dakota is hereby divided into two districts as above described for the purposes of this act, and shall be known as the district of South Dakota, and the

district of North Dakota, and the patients from the district of South Dakota shall be taken to and cared for at the said South Dakota Hospital for the Insane, and the patients from the district of North Dakota shall be taken to and cared for at the said North Dakota Hospital for the Insane. [C. L. 260.]

NORTHERN HOSPITAL FOR THE INSANE.

458. Appropriation of land. [Ch. 164, '95.] § 1. There is hereby appropriated and set apart, for the use and benefit of the Northern Hospital for the Insane, forty thousand acres of the land granted to the state of South Dakota, for "other educational and charitable purposes," by the act of congress, approved February twenty-second, eighteen hundred and eighty-nine, and not otherwise appropriated.

459. Manner of selection of land. [Ch. 164, '95.] § 2. It shall be the duty of the commissioner of school and public lands, the state superintendent of public instruction and the state auditor to make the selection of the land appropriated by section one hereof, within one year from and after the passage and approval of this act.

460. Rentals and proceeds of sales — how appropriated. [Ch. 164, '95.] § 3. The proceeds of all rentals derived from the lands appropriated under this act and the proceeds of all sales of the land so appropriated, shall be held for the use and benefit of the Northern Hospital for the Insane.

461. Location — donation of site to state. [Ch. 101, '93.] § 1. That an additional hospital for the insane to be known as the "Northern Hospital for the Insane," be and is hereby established at Redfield, Spink county, South Dakota. *Provided*, that a tract of land, not less than one hundred and sixty (160) acres within one mile of said city of Redfield be donated and secured to the state of South Dakota in fee

simple as a site for said hospital, within six months after the passage and approval of this act, and the governor of the state is hereby authorized and empowered to see that a good and sufficient deed be made to the state for the land embraced in such site.

462. To be used exclusively for hospital for the insane. [Ch. 101, '93] § 2. The exclusive purpose of such hospital for the insane shall be the custody and treatment of insane persons found within this state, and under the same rules and regulations as are now provided by law for the reception, custody and treatment of persons adjudged to be insane, at the hospital for the insane at Yankton in said state.

463. Under supervision of board of charities and corrections. [Ch. 101, '93.] § 3. Said hospital shall be under the control of the state board of charities and corrections, and said board shall with reference to the control and management of the same have the same powers and perform the same duties as are provided and conferred by law for their control and management of the several charitable and penal institutions of this state.

464. Duty of board of charities and corrections in construction of buildings. [Ch. 101, '93.] § 4. The said state board of charities and corrections are hereby authorized, and it is hereby made their duty to immediately commence the erection and construction of a suitable building or buildings for said additional hospital for the insane, upon the grounds to be secured and donated as hereinbefore provided, as a site for the same, as soon as a sufficient appropriation is secured for the erection thereof. They shall have the power to let contracts for the building and completing of said hospital building or buildings; and shall have the entire supervision of the purchase of materials and construction of said building or buildings, *Provided*, that all contracts for the erection and completion of said building or buildings shall be let to the lowest responsible bidder, after notice of the letting of such con-

tract shall have been published in at least four of the leading newspapers in different parts of the state, for at least thirty days before the letting of such contract, and the said board shall have the power to reject any or all bids, and shall upon the letting of such contract require a sufficient bond with security to be approved by said board for the faithful performance of said contract, and *provided further*, that said board nor any member thereof shall be directly or indirectly interested in such contract, or in any contract for the purchase of building material, supplies or any other article for said hospital.

465. Admission of patients, how governed. [Ch. 101, '93.] § 5.

When such building or buildings shall be completed, and ready for occupancy, and a medical superintendent and other necessary officers and employes have been appointed therefor, it shall be the duty of said board of charities and corrections to examine into the condition and capacity of the hospital for the insane at Yankton, and the accommodations there afforded for the proper care and treatment of insane patients, and the demands likely to arise for admission of other patients to such hospital from counties nearest the same, and they shall thereupon direct and superintend the transfer of any and all patients who for want of sufficient room or accommodations cannot receive the best of care and treatment at said hospital, to the Northern Hospital for the Insane, at Redfield, *Provided*, That in making such transfer, those shall first be removed whose settlement at the time of commitment to the hospital at Yankton were in the counties nearest said Northern Hospital for the Insane, and *Provided further*, That in making removals they may also anticipate demands for the admission of patients from counties nearest said hospital.

466. General supervision shall be under control of board of charities and corrections. [Ch. 101, '93.] § 6. Thereafter and until otherwise provided by law, the number of patients to be admitted to the said

Northern Hospital for the Insane or to the Dakota Hospital for the Insane at Yankton shall be under the general supervision of said state board of charities and corrections, and said board shall to that end notify and direct the county commissioners of insanity in and for the several counties of the state as to which of said hospitals persons thereafter adjudged insane, may be sent, and in exercising such supervision, the said board in addition to the accommodations afforded at either of said hospitals for the care and treatment of patients, shall take into consideration the expenses to be saved by the commitment to the hospital nearest the home of each patient.

ARTICLE 2. SCHOOL FOR DEAF MUTES.

467. School established. The South Dakota School for Deaf Mutes is hereby established and located on the southwest quarter of section number fifteen, in township number one hundred and one, range number forty-nine, in the county of Minnehaha, and within the corporate limits of the city of Sioux Falls, state of South Dakota, and shall be under the charge of a board of trustees to consist of five residents of this state. [C. L. 261.]

475. Who may be admitted. All deaf and dumb persons, residents of this territory, over six years of age and under twenty-one years of age, capable of receiving instruction, free from contagious or chronic disease, shall be received and taught, free of charge. Like pupils may be received from without this state upon payment to the treasurer of the board of trustees, quarterly in advance, at the rate of one hundred and eighty dollars per academic year; but no pupil from without the state shall ever be received to the exclusion of any pupil resident within this state from any of the privileges or benefits of the school. All pupils shall freely and equally enjoy all the benefits and privileges of the school, and have the use of the library and books of tuition, and

receive board, washing, lodging, attendance, medical care, fuel, et cetera, et cetera, without preference or distinction. And all pupils shall be treated with the most considerate regard for their misfortune, and always with kindness and humanity, and the board shall carefully enforce this provision. [C. L. 269.]

476. No officer to be interested in contracts. No trustee or officer of the school shall be interested either directly or indirectly in any contract for the purchase of building materials, supplies, or any other articles for the use of the school. [C. L. 270.]

ARTICLE 3. INSTITUTION FOR THE BLIND.

478. Duty of governor. [Ch. 30, '95.] § 1. It is hereby made the duty of the governor of this state to accept from the town of Gary, in Deuel county, South Dakota, a good and sufficient deed conveying to the state of South Dakota, in fee simple, the certain tract of land situated in said town of Gary known on the plat thereof as "Court House Block," together with all buildings thereon located and appurtenances thereunto belonging; *Provided*, Such deed is so made and delivered on or before July first, eighteen hundred and ninety-five.

479. Name. [Ch. 30, '95.] § 2. An institute for the care and education of the blind, to be known as the "South Dakota Blind Asylum," is hereby located and established upon the premises described in section one of this act in said town of Gary, in Deuel county.

480. Duty of state board of charities and corrections. [Ch. 30, '95.] § 3. It is hereby made the duty of the state board of charities and corrections to take possession of said premises as soon as the deed provided for in section one of this act has been duly made and delivered,

and the citizens of Gary have made all necessary alterations, additions and repairs to the buildings thereon, so that the same shall suitably accommodate said blind asylum; to make all necessary rules for the government of the same, and to employ a superintendent and such instructors and attendants as may be necessary.

(Compiled Laws 1887. Adopted March 5, 1889.)

481. Duty of county superintendent of schools. Each county superintendent of public schools shall report to the county commissioners of his county, at any regular meeting of said commissioners, the name, age, name of parent or guardian, and postoffice address of every blind person, and all such persons as may be too blind to acquire an education in the common schools, between the age of five and twenty-one years, residing in his county. [C. L. 274.]

482. Duty of county commissioners. It shall be the duty of the county commissioners, when they have been notified that there are any blind persons in their county, who are entitled to the benefits of an institution for the support and education of the blind, to at once report the name, age and residence of such persons in their county to the governor of this state. [C. L. 275.]

483. Who may be admitted. [Ch. 31, '95; C. L. 276.] Every blind person of this state, and all such as may be too blind to acquire an education in the common schools, of suitable capacity, between the ages of ten and thirty years, shall be entitled to receive an education of at least eight years at the expense of the state of South Dakota, at the said institution for the support and education of the blind. *Provided*, That the time that any pupil or pupils have spent in any institution for the education of the blind shall be deducted from the eight years above specified.

484. Proceeding — certificate of county superintendent of schools. In order to entitle any blind person to the benefits of this act, it shall be necessary for such person to obtain a certificate of the superintendent of schools of the county in which such person resides, that such person (giving name, age and residence) is blind, or too blind to acquire an education in the common schools, and is entitled to the benefit of such an institution, which certificate shall be approved by the governor; and upon presentation of such certificate and an order from the governor of this state to the authorities of the institution to admit such person, specifying the time for which he or she shall be admitted under the

existing contract, such person shall be admitted into such institution and receive all the benefits of the same. [C. L. 277.]

485. Report of admissions. The authorities of such institution, when they receive any such person from this state under the contract, shall at once notify the governor of this state, giving name of person so admitted, the date when admitted and the time for which such persons are admitted. [C. L. 278.]

486. Duty of state auditor. It shall be the duty of the auditor of this state to audit all accounts presented by the authorities of the institution for the support of the blind persons of the state with which the governor of the state has made a contract as provided in section two hundred and seventy-two, under such regulations as such auditor may prescribe, and to draw his warrant or warrants on the state treasurer for the amount due such institution. [C. L. 279.]

ARTICLE 4. UNIVERSITY OF SOUTH DAKOTA.

487. Objects — tuition. The objects of the University of South Dakota, established by an act of the legislative assembly of the territory of Dakota, entitled "an act to locate the University of the Territory of Dakota," approved April twenty-first, anno Domini eighteen hundred and sixty-two, shall be to provide the best and most efficient means of imparting to young men and women on equal terms a liberal education and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications. The university, so far as practicable, shall begin the courses of study in its collegiate and scientific departments, at the points where the same are completed in high schools; and no student shall be admitted who has not previously completed the elementary studies in such branches as are taught in the common schools throughout the state. No student who shall have been a resident of the state one year next preceding his admission shall be required to pay any fees for tuition in the university, except in the law department and for extra studies. The directors may prescribe rates of tuition for any pupil in the law department, or who shall not have been a resident of the state as aforesaid, and for teaching extra studies. [C. L. 280.]

488. No sectarian control. The university shall never be under the exclusive control of any religious denomination whatever, and no instruction, either sectarian in religion or partisan in politics, shall ever be allowed in any department of the university. [C. L. 281.]

489. Departments. The university shall include a collegiate, scientific, normal and such other departments with such courses of instru-

tion and elective studies as the board of directors may determine, and the board shall have authority to confer such degrees and grant such diplomas and other marks of distinction as are usually conferred and granted by other universities. [C. L. 284.]

490. Cabinets. All specimens of natural history and geological and mineralogical specimens which are or hereafter may be collected by the state geologist or by any others appointed by the state to investigate its natural and physical resources, or donated by any person, shall belong to and be the property of the university, and shall form a part of its cabinet of natural history, which shall be under the charge of the professor of that department. [C. L. 292.]

ARTICLE 6. AGRICULTURAL COLLEGE AND EXPERIMENTAL STATION.

491. Name and design. The agricultural college established by chapter three of the session laws of eighteen hundred and eighty-one, shall be known by the name of the South Dakota Agricultural College. The design of the institution is to afford practical instruction in agriculture and the natural sciences connected therewith, and also the sciences which bear directly upon all industrial arts and pursuits. The course of instruction shall embrace the English language and literature, mathematics, civil engineering, agricultural chemistry, animal and vegetable anatomy and physiology, the veterinary art, entomology, geology and such other natural sciences as may be prescribed, political, rural and household economy, horticulture, moral philosophy, history, bookkeeping and especially the application of science and the mechanic arts to practical agriculture in the field. [C. L. 318.]

492. Course of study. A full course of study in the institution shall embrace not less than four years, and the college year shall consist of not less than nine calendar months, which may be divided into terms by the board of regents as in their judgment will best secure the objects for which the college was founded. [C. L. 319.]

493. Faculty. The faculty shall consist of the president, teachers and instructors, and shall pass all needful rules and regulations for the government and discipline of the college, regulating the routine of labor, study, meals and the duties and exercises, and all such rules and regulations as are necessary to the preservation of morals, decorum and health. [C. L. 319.]

494. President. The president shall be chief executive officer of the agricultural college, and it shall be his duty to see that all rules and

regulations are executed, and the subordinate officers and employes not members of the faculty shall be under his direction and supervision. [C. L. 322.]

495. Student's wages. The president of the college and the president of the board of regents shall constitute a committee to fix the rate of wages to be allowed to students for labor on the farm or in the shops or kitchen of the agricultural college. [C. L. 323.]

496. Annual report of faculty. The faculty shall make an annual report to the board of regents on or before the first Monday in December of each year, showing the condition of the school and farm and the results of farm experiments, and containing such recommendations as the welfare of the institution in their opinion demands. [C. L. 324.]

497. Experimental station. There is hereby established an agricultural experiment station in connection with the agricultural college of South Dakota, and under the direction of the board of regents of said college, for the purpose of conducting experiments in agriculture, according to the terms of section one of an act of congress, approved March third, eighteen hundred and eighty-seven, and entitled "An act to establish agricultural experiment stations in connection with the colleges established in the several states, under the provisions of an act approved July second, eighteen hundred and sixty-two, and of the acts supplementary thereto." [C. L. 328.]

498. Assent of legislature. The assent of the legislature of South Dakota is hereby given, in pursuance of the requirements of section nine, of said act of congress, approved March third, eighteen hundred and eighty-seven, to the grant of money therein made, and to the establishing of an experiment station, in accordance with section one of said last mentioned act, and assent is hereby given to carry out all and singular the provisions of said act. [C. L. 329.]

Sub-Experiment Station.

(Ch. 8, 1897. In force March 3, 1897.)

499. Established. [Ch. 8, '97.] § 1. There is hereby established a sub-experiment station for the purpose of carrying on experiments with drouth-resisting forage plants suitable for the dry range regions of middle South Dakota. The aforesaid sub-experiment station shall be under the control of the authorities now established in connection with the South Dakota Agricultural College, and the line of experiments to be made shall be confined solely to the investigation of various kinds of drouth-resisting forage plants. No irrigation shall be employed.

500. Lands — how furnished. [Ch. 8, '97.] § 2. The land required for the plats, and any building needed by said sub-experimental station shall be furnished to the state, rent free by the citizens of the locality in which the said stations shall be located. The state shall acquire no title or interest in such lands or building, except the absolute control of the same and the forage produced so long as the proposed experiments are in progress. The regents shall exact a lease for not less than two years, with the privilege of continuing the same an additional two years at their option, of the land and building before any work shall be commenced upon said land, and neither the lease nor the land shall be subject to sale or transfer during the time the experiments are in progress.

501. Where located. [Ch. 8, '97.] § 3. Said sub-experiment station shall be located within one-half mile of Highmore, South Dakota.

502. Appropriation. [Ch. 8, '97.] § 4. The sum of six hundred dollars (\$600) or as much thereof as may be necessary, shall be appropriated by the regents from the funds paid by the general government to the state of South Dakota for the maintenance of the agricultural experiment station, for the support of the said sub-experiment station provided for in section one of this act. All moneys thus appropriated shall be expended and accounted for under their rules and the laws governing such expenditures.

ARTICLE 7. NORMAL SCHOOL (AT MADISON).

503. School established. A normal school for the state of South Dakota is hereby established at Madison, in Lake county, South Dakota, the exclusive purpose of which shall be the instruction of persons, both male and female, in the art of teaching and in all the various branches that pertain to a good common school education, also to give instruction in the mechanical arts and in husbandry and in agricultural chemistry, in the fundamental laws of the United States, and in what regards the rights and duties of citizens. [C. L. 330.]

504. Who and how admitted. Any person may be admitted as a pupil of said normal school, who shall pass a satisfactory examination; *provided*, that the applicant shall, before admission, sign a declaration of intention to follow the business of teaching schools in this state; *and, provided further*, that the pupil may be admitted without signing such declaration of intention, on such terms as the normal school board may require or prescribe; and each county shall be entitled to send pupils in ratio to the representation in the legislature to which it may be entitled, not to exceed such number as the board may prescribe. [C. L. 337.]

505. Lectures. Lectures in chemistry, comparative anatomy, the mechanical arts, agricultural chemistry and any other science or any other branches of literature that the board of education may direct, may be delivered to those attending such school, in such manner and on such terms and conditions as the board of education may prescribe. [C. L. 337.]

506. Certificate to qualified pupil. As soon as any person has attended said institution twenty-two weeks, said person may be examined in the studies required by the board in such manner as may be required by them, and if it shall appear that such person possesses the learning and other qualifications necessary to teach a good common school, said person shall receive a certificate. [C. L. 338.]

507. School lands selected and sold. For the purpose of erecting said normal school building, the governor, secretary of state and auditor, shall, within six months after the admission of South Dakota as a state, or as soon thereafter as the government shall cede to the state of South Dakota the school lands lying within her border, set apart for the erection of said normal school building twenty sections of land belonging to the state of South Dakota, which lands shall be selected from any lands not otherwise appropriated; and the governor, secretary of state and auditor, may, at their discretion, after advertising four months in at least four newspapers published in the state, sell said lands to the highest bidder at public sale; said lands to be sold in quantities not exceeding one hundred and sixty acres to any person at one bid; *provided, however*, that no part of said land shall be sold for less than three dollars per acre. [C. L. 341.]

508. Disposal of funds. The proceeds of said sale shall be deposited with the treasurer as a normal school fund, and shall be drawn therefrom upon the warrant of the auditor, to be issued in pursuance to a certificate of the board of education, signed by their president and countersigned by the secretary, that the money is due and payable to the principal of the normal school, or his assistants, or the teachers or officers employed, or the members of the board of education, as herein authorized, or for necessary incidental expenses in the support and maintenance of said school, or for the erection and completion of the normal school building. [C. L. 342.]

509. Sale adjourned. The governor, secretary of state and auditor may adjourn the sale of said lands from time to time as they may deem necessary; *provided*, that such adjournment shall in no case extend beyond a period of one year from the day first appointed for said sale. [C. L. 344.]

510. Expenses of sale. All necessary expenses arising from the advertising and sale of said lands shall be paid from the funds arising from said sale, by a warrant drawn by the auditor upon the state treasurer; *provided*, that all accounts for expenses above specified shall first be approved by the superintendent of public instruction. [C. L. 348.]

ARTICLE 8. NORMAL SCHOOL (AT SPEARFISH).

511. School established. A normal school for the state of South Dakota is hereby established at Spearfish, in Lawrence county, state of South Dakota, the exclusive purpose of which shall be the instruction of persons, both male and female, in the art of teaching, and in all the various branches that pertain to a good common school education; also to give instruction in the mechanical arts and in husbandry and agricultural chemistry, in the fundamental laws of the United States, and in what regards the rights and duties of citizens. [C. L. 349.]

512. Certificate to qualified people. As soon as any person has attended said institution twenty-two weeks, said person may be examined in the studies required by the board, in such manner as may be prescribed by them, and if it shall appear that such person possesses the learning and other qualifications necessary to teach a good common school, said person shall receive a certificate. [C. L. 355.]

513. School lands to be selected and sold. For the purpose of erecting said normal school building, the governor, secretary of state and auditor shall, within six months after the admission of South Dakota as a state, or as soon thereafter as the government shall cede to the state of South Dakota the school lands lying within her border, set apart for the erection of said normal school building twenty sections of land belonging to the state, which lands shall be selected from any lands not otherwise appropriated; and the governor, secretary of state, and auditor may, at their discretion, after advertising three months in at least four newspapers published in the state, sell said lands to the highest bidder at public sale; said lands to be sold in quantities not exceeding one hundred and sixty acres to any one person at one bid; *provided, however*, that no part of said land shall be sold for less than three dollars per acre. [C. L. 358.]

514. Disposal of lands. The proceeds of said sale shall be deposited with the treasurer as a normal school fund, and shall be drawn therefrom upon a warrant of the auditor, to be issued in pursuance of a certificate of the board of education, signed by their president and countersigned by the secretary, that the money is due and payable to the principal of the normal school, or his assistants, or the teachers or

officers employed, or members of the board of education, as herein authorized, or for necessary incidental expenses in the support and maintenance of said school, or the erection and completion of the normal school building. [C. L. 359.]

515. Sale may be adjourned. The governor, secretary of state and auditor may adjourn the sale of said lands from time to time as they may deem necessary; *provided*, that such adjournment shall in no case extend beyond a period of one year from the day first appointed for the sale of said land. [C. L. 361.]

516. Expenses of sale. All necessary expenses arising from the advertising and sale of said lands shall be paid from the funds arising from said sale, by a warrant drawn by the auditor upon the state treasurer; *provided*, that all accounts for expenses above specified shall be first approved by the superintendent of public instruction. [C. L. 365.]

ARTICLE 9. NORMAL SCHOOL (AT SPRINGFIELD).

517. School established. A normal school for the state of South Dakota, is established at Springfield, Bon Homme county, state of South Dakota, the exclusive purpose of which shall be the instruction of persons, both male and female, in the art of teaching and in all the various branches that pertain to a good common school education; also to give instruction in the mechanical arts and in husbandry and in agricultural chemistry, in the fundamental laws of the United States, and in what regards the rights and duties of citizens; *provided*, that a tract of land not less than twenty acres, adjacent to the said town of Springfield, be donated and secured to the state of South Dakota in fee simple as a site for said normal school, within three months from the taking effect of this amendment; and the governor of the state is hereby empowered and it is his duty to see that a good and sufficient deed be made to the state for the same. [C. L. 366.]

519. Conditions of admission. Any person may be admitted as a pupil of said normal school, who shall pass a satisfactory examination; *provided*, that the applicant shall, before admission, sign a declaration of intention to follow the business of teaching schools in this state; *and, provided, further*, that the pupils may be admitted without signing such declaration of intention, on such terms as the normal school board may require or prescribe; and each county shall be entitled to send pupils in

the ratio of the representation in the legislature to which it may be entitled, not to exceed such number as the board may prescribe. [C. L. 373.]

520. Lectures. Lectures in chemistry, comparative anatomy, the mechanical arts, agricultural chemistry and any other science or any other branches of literature that the board of education may direct, may be delivered to those attending such school in such manner and on such terms and conditions as the board of education may prescribe. [C. L. 375.]

521. Certificate to qualified pupil. As soon as any person has attended said institution twenty-two weeks said person may be examined in the studies required by the board in such manner as may be prescribed by them, and if it shall appear that such person possesses learning and other qualifications necessary to teach a good common school, said person shall receive a certificate. [C. L. 376.]

522. Expenses of sales. All necessary expenses arising from the advertising and sale of said lands shall be paid from the funds arising from said sale, by a warrant drawn by the auditor upon the state treasurer; *provided*, that all accounts for expenses above-specified shall first be approved by the superintendent of public instruction. [C. L. 386.]

ARTICLE 10. SCHOOL OF MINES.

523. School established. A school of mines for the state of South Dakota is hereby established at Rapid City, in Pennington county, state of South Dakota. It shall be the object of such school of mines to furnish facilities for the education of such persons as may desire to receive special instruction in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics, drawing, the fundamental laws of the United States, and the rights and duties of citizens. [C. L. 387.]

524. Who may be admitted. The said school of mines shall be a place for instruction without charge, to all bona fide residents of this state, without regard to sex or color; and with the consent of said board, students from other states or territories may be admitted thereto, upon such terms and upon such rates for tuition as the board may prescribe. [C. L. 391.]

525. Fees for assaying. It shall be lawful for the dean of the said school of mines, who shall be appointed by the board of trustees, to charge and collect such reasonable fees for any and all assays analyses, or mill tests made at the school of mines, as the said board may prescribe, an account of which shall be kept by said dean and paid over monthly

to the treasurer of said school of mines, which shall become a part of the school of mines fund. [C. L. 397.]

526. Fund, how served. The school of mines fund shall be used solely for the support of the school of mines, and for no other purpose whatever. [C. L. 398.]

INDUSTRIAL SCHOOL AT ABERDEEN.

526a. Proviso — establishment and location. [Ch. 76; '99.] § 1. There shall be and hereby is established and located at Aberdeen, in the county of Brown, and state of South Dakota, an Industrial School and Institute of Technology of and for the state of South Dakota, the purpose of which shall be the instruction and education of persons of both sexes in the industrial and mechanical trades, arts and sciences and in technology and all kindred branches of learning. Provided, That a tract of land of not less than twenty acres in area, within or adjacent to the city limits of the city of Aberdeen, in the county of Brown and state of South Dakota, be donated and secured to the state of South Dakota, in fee simple, as a site for said school, within six months from and after the taking effect of this act; and the governor of this state is hereby empowered, and it is hereby made his duty, to see that a good and sufficient deed be made to this state for the same.

526b. Supervision. [Ch. 76, '99.] § 2. The said school shall be under the exclusive supervision and control of the state board of regents of education.

526c. Apportionment of lands. [Ch. 76, '99.] § 3. There is hereby apportioned and set apart for the establishment, maintenance, support, use and benefit of said school, forty thousand acres of land, granted to the state of South Dakota by the United States of America, by act of Congress of the United States of America, approved February,

twenty-second, A. D. 1889, entitled "An Act to provide for the division of Dakota into two States, and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to such states," for such other educational and charitable purposes as the legislature of said state (being the state of South Dakota) may determine; and it is hereby determined and enacted that said school be so located and established at said city of Aberdeen and that out of said lands there be donated, apportioned and set apart for the exclusive establishment, support, use and benefit of said school, forty thousand acres of said lands, or out of any lands granted and donated to the state of South Dakota by the United States of America, and not otherwise appropriated.

526d. Selection of lands. [Ch. 76, '99.] § 4. It is hereby made the duty of the governor, the state auditor and the commissioner of school and public lands to make selection of the forty thousand acres of land so donated and set apart in section three of this act, within one year from and after the passage and approval of this act; which lands when so selected shall be set apart for the establishment, maintenance, support, use and benefit of said school.

526e. Rentals and proceeds of sale of lands. [Ch. 76, '99.] § 5. The proceeds of all rentals derived from the lands so donated and set apart under this act, and the proceeds of all sales of the same shall be held for the use and benefit of said school as hereinbefore provided.

LIMITATION OF EXPENDITURES.

527. Educational institutions. [Ch. 107, '90.] § 1. No educational institution supported by the state appropriations shall incur any expense in excess of the appropriations made for its maintenance and support.

528. Penal and charitable institutions. [Ch. 107, '90.] § 2. No penal or charitable institution shall incur any indebtedness in excess of the appropriation made for its maintenance and support, except in case of necessary repairs for damage to buildings or fixtures, caused by storm, fire or accident, or for the maintenance of inmates admitted in excess of the average estimate.

529. Pro rata computation. [Ch. 107, '90.] § 3. Any expenditure for the maintenance of inmates in excess of the estimated average number shall be computed pro rata with the expense of maintenance for average number.

530. Pro rata expenditures. [Ch. 108, '90.] § 1. In all cases where appropriations of money have heretofore, or may hereafter be made for periods longer than one year it shall be unlawful for the person or persons, whose duty it is to expend said money, to audit, expend or contract to pay more money in any one year than a pro rata share thereof, that is the expenditures for one year shall never exceed the proportion which one year of time bears to the whole time.

531. Expenditures in excess of appropriation prohibited. [Ch. 97, '95; ch. 111, '91.] Any state officer, any members of the board of charities and corrections, or regents of education, member of board of trustees of any public institution or superintendent of the same, or any other agent of the state of South Dakota who shall create or attempt to create any indebtedness against the state without express authority of the statute so to do, or any state auditor or member of any auditing board who shall draw any voucher or warrant without an appropriation in exact amount for the specific purpose first having been made by the

legislature, or any state treasurer or treasurer of such board who shall pay any voucher or warrant so drawn, or who shall make or attempt to make any expenditures of money in excess of the amount appropriated for any purpose by act of the legislature, shall be deemed guilty of a misdemeanor; *Provided*, That nothing in this act shall be deemed to prevent the issuance of funding warrants or warrants based upon the revenues assessed and not yet collected. *Provided, further*, That nothing in this act shall be so construed as to forbid the state auditor to issue warrants apportioning the school funds and taxes collected from corporations to the several counties.

BOARD OF REGENTS OF EDUCATION.

532. Appointment by the governor and senate. [Ch. 58, '97.] § 1. As soon as practicable after the passage of this act and before the first day of March, one thousand eight hundred and ninety-seven (1897), the governor, by and with the consent of the senate, shall appoint five persons of probity and wisdom from among the best and the best known citizens, residents of different portions of the state, none of whom shall reside in the counties in which any of the state educational institutions are located, who shall constitute a board to be designated the regents of education; *Provided*, that in all appointments to the regency of education the persons selected shall be of the different political parties existing at the time such appointments are made.

533. Terms of office. [Ch. 58, '97.] § 2. One of the persons so appointed shall hold office until January first, eighteen hundred and ninety-nine (1899), and two (2) until January first, nineteen hundred and one (1901), and two (2) until January first, nineteen hundred and three (1903), as the governor shall indicate in his nomination, and all full appointments at and after the expiration of any of these terms shall be for six years, it being the intention of this act that all expirations of these terms shall occur on the first day of January of each odd or legislative year, or as soon thereafter as their successors are chosen and qualified; *Provided*, that all full appointments thereafter must be made before the first day of February of the regular biennial legislative year.

534. Vacancies, how filled. [Ch. 58, '97.] § 3. In case a regent of education shall die, resign, remove from the state or for any other reason vacate his office, or become permanently disqualified from performing its duties, the governor of the state shall fill the vacancy by suitable and prompt appointment, and such appointee shall be clothed with full authority as a regent, but his term of service shall cease and expire with the

next legislative session unless sooner confirmed by the senate. But the governor shall not have power to fill any vacancies caused by the refusal of the senate to confirm, nor vacancies caused by his own neglect to nominate to the senate in time for confirmation.

535. Qualification and organization. [Ch. 58, '97.] § 4. Immediately upon the appointment and confirmation of the first five (5) persons above named in section one (1) of this act the governor shall summon them to assemble forthwith at the capital of the state, whereupon each shall take an oath before a proper officer to support the constitution of the United States and of this state and to perform his duties as a regent of education to the best of his ability.

As soon as they are thus properly qualified they shall organize by electing one of their number president and by the election of a secretary. Thus qualified and organized they shall have authority to make such rules as are necessary for their own government as a board and they shall immediately assume the exclusive control and management of all the educational institutions which are maintained either wholly or in part by the state, and at once, thereupon the terms of office and all authority of all boards or persons of whatsoever name, heretofore charged with this duty, shall cease and expire.

All persons subsequently appointed as regents shall each subscribe to a like oath of office before taking their seats, and all oaths of office of the regents of education shall be duly filed with the secretary of state.

536. Appointment of committees. [Ch. 58, '97.] § 5. To facilitate their work, the regents of education shall have power to appoint of their own members such committees as seem desirable, but they shall appoint a standing committee of regents for each institution under their control, whose chairman may be charged by them, and under their rules, with certain executive duties in connection with the institution for which he was appointed, and which may need attention during the interim of board meetings. They are also empowered to employ a competent stenographer and bookkeeper.

537. Meetings — quorum, etc. [Ch. 58, '97.] § 6. The regents of education shall hold two (2) regular meetings each year, one to be known as the annual meeting, and one as the semi-annual meeting, at such stated times as shall best subserve the interests of the institutions under their control. Extra meetings may also be held in case of weighty emergency on the call of the president or by joint request of a majority of the members, due and reasonable notice always being given. Three regents shall constitute a quorum for doing business, but two may adjourn from day to day.

538. Absences. [Ch. 58, '97.] § 7. The failure of any regent to attend two successive regular meetings as herein provided, may be construed by the governor as a resignation and he may proceed to fill the vacancy unless such absences were on account of temporary disabling, sickness or other equally valid reason accepted by the regents at their next meeting.

539. General powers and duties. [Ch. 58, '97.] § 8. The regents of education, qualified and organized as prescribed in section four (4) of this act, shall become, and they and their successors in office shall continue to be a legal corporation, or body corporate, with power to sue and be sued, to hold and manage fully, for the purposes for which these educational institutions were established, any property belonging to said institutions, collectively or severally, or of which they shall in any manner become possessed; and all previous boards and persons having had custody of said property, or control of said institutions, shall, at once, turn over the same together with all papers, records, contracts or other archives belonging to said institutions to the said regents of education.

540. Authority to make contracts and to expend moneys. [Ch. 58, '97.] § 9. The regents of education as a corporation shall have power to make contracts for service, for the erection of buildings and for the purchase of all lands, materials and supplies needed; and in the carrying out of such contracts they shall have power to expend moneys, to exact and collect penalties and to purchase or sell property within the limitations of state and national law; *Provided*, that all contracts for the erection or repairs of buildings, or for the purchase of fuel or other ordinary supplies exceeding in value two hundred dollars, shall be by means of publicly advertised competing bids and by public letting; And, provided further, that no regent shall be directly or indirectly pecuniarily interested in any such contract.

And said regents of education as a board may bring suit in proper court having jurisdiction in the name of the regents of education, to enforce any contract made by them as such board and may also bring suit in all matters relating to such property, or to the care, custody, control, management or improvement thereof. And it is hereby made the duty of the attorney general to prosecute any such suit upon the request of said board. Any moneys collected upon any judgment obtained under the provisions of this act shall be paid into the state treasury for the benefit of the educational institutions and credited to the proper fund or funds.

Any regent is authorized to administer oaths and examine witnesses whenever necessary in the performance of the duties of the board.

This act is intended to confer, and does confer, upon the regents of education all powers usually exercised by such boards, and which are necessary to the proper legal management of the educational institutions placed under their control, and the property belonging to the same.

541. Employment of agents. [Ch. 58, '97.] § 10. The regents of education in their capacity as a board and for the purpose of exercising proper control over those institutions of learning which are placed in their care shall have full power to employ or dismiss all members of the faculties of instruction of said institutions, all assistants, foremen, secretaries, laborers or other agents necessary to the proper management of the institutions, to determine their number, their qualifications, define their duties, fix the period or terms of their employment, and the rate and manner of their compensation; *Provided*, that no person shall be employed or dismissed by reason of any sectarian or political opinions held.

542. Departments — courses of study and rules of government. [Ch. 58, '97.] § 11. The regents of education shall have full power, to authorize for the institution under their control such departments and courses of study as they may think best, to determine what text-books shall be used, what requirements for the admission and graduation of students, shall be maintained, what rules shall be enacted and enforced for the government of students, and said regents shall have power to make all other rules and regulations for the wise and successful current management of the schools under their control; And, further, they are hereby empowered to delegate provisionally any of the authority given in this section to the presidents, deans, principals or faculties in instruction of said schools, as in the judgment of said regents may be proper or as may be in accordance with usual custom in such cases.

543. Tuition fees, etc. [Ch. 58, '97.] § 12. The regents of education shall fix all rates of tuition and of other fees, to be paid by students, but such rates must be the same in all the different institutions. They may receive free of tuition two students appointed by each state senator, and one by each representative of the state legislature in any one of the institutions under their control; *Provided*, that the period for which such appointment was made shall expire with the term of office of the said senator or representative, and, provided, that such appointees shall be residents of the district or county whose senator or representative makes the appointment; and provided, further, that such appointees shall comply with all the rules and requirements of the institution which they desire to enter. No student, however, shall receive any other gratuity whatever.

544. Needless duplication of departments forbidden. [Ch. 58, '97.] § 13. The regents of education are hereby expressly forbidden to continue or to create chairs, departments, laboratories, libraries, or other equipment in multiplication except where the obvious needs of the special work of the schools make such multiplication necessary. In all things the regents are to administer to the schools in such a manner as to enable each one of them to do in the best manner its own specific work, but all with a view to the strictest economy, and so as to unify and harmonize the entire work of all the schools under their control.

545. Conferring degrees, etc. [Ch. 58, '97.] § 14. The regents of education are authorized to confer all scholastic honors and degrees usually granted by such boards; but all degrees, diplomas and certificates of graduation shall be issued and conferred in their name and by their express authority. In conferring degrees the regents shall conform as nearly as may be to the best and most reputable current practice in such matters. Students shall be graduated from any one of these institutions by the regents of education upon recommendation of the appropriate faculty of that institution. A certificate of graduation from a full course in any one of the normal schools or from the state university shall be a license valid for five years to teach in any of the public schools of this state; Provided the graduate of the university has taken a course in pedagogy as given in that institution.

546. The agricultural experiment station. [Ch. 58, '97.] § 15. The United States agricultural experiment station for South Dakota, being by national law a department of, and under the direction of, the agricultural college, shall be under the exclusive control of the regents of education, just as other departments and institutes are under their control.

547. Farmers' institutes, etc. [Ch. 58, '97.] § 16. The regents of education are authorized to encourage and provide for farmers' institutes to be conducted by members of the agricultural college faculty, or by any one else designated by said regents; and the said regents are likewise authorized to encourage and as far as possible provide for any other form of university extension work which is feasible and of value to the people.

548. Election of officers and their terms. [Ch. 58, '97.] § 17. All officers of the board shall be elected for one year, and the election, except in case of vacancies, shall be held at the annual meeting.

549. Compensation of regents and their officers. [Ch. 58, '97.] § 18. The regents of education shall receive no compensation for their services, but each shall be paid five dollars per day for every day's

service to cover his actual expenses, and this per diem shall be paid, upon their itemized and properly certified vouchers, from the state treasury upon the warrant of the auditor of state; Provided, that any regent serving from the Black Hills region shall receive twenty-five dollars for attendance upon any meeting east of the Missouri river, but not exceeding fifty dollars for any fiscal year; and provided that the entire sum paid for any one year to said regents of education shall not exceed one thousand dollars.

550. Appropriations provided for regents of education. [Ch. 58, '97.]

§ 19. In the general appropriation for state purposes the sum of twenty-six hundred dollars, or so much thereof as may be needed, shall be provided each year for the per diem of the regents of education, for the salary of their clerk and stenographer, and for such blanks, books, stationery and postage as may be needed.

Authority of board of regents is subordinate to right of legislature to fix limit of expenditure by appropriation. *Jewell Nursery Co. v. State*, 4 S. D. 214; 56 N. W. Rep. 113.

Such board has no authority to bind the State beyond the appropriation. *Id.*

551. Treasurer — custody and collection of funds. [Ch. 58, '97.]

§ 20. The state treasurer shall be the treasurer of the regents of education, and he shall perform all the duties of such office, subject to such regulations as they may adopt, not inconsistent with his other official duties, and he and his sureties shall be liable on his official bond for the faithful discharge of such duties. Said treasurer shall have authority to receive and receipt for all moneys arising from any source for the use of any of the educational institutions under the control of the said regents, and he shall keep such separate accounts of the several funds as they shall prescribe. All moneys received from rents of dormitories, tuition or other fees authorized by the regents of education, or from articles, products or materials sold by their authority, shall be collected by some person designated by said regents for each institution to make such collections, under proper bonds, and said persons shall transmit to the state treasurer at the close of each calendar month all moneys thus received by him during that month; and no other person shall be permitted to collect or hold any money belonging to said institutions. Moneys received from the national government, under any of the various grants, shall be payable to the state treasurer, as treasurer of the regents of education, and shall be receipted for by him. All moneys received as interest on the national land grant funds or from leases of the land granted to these institutions under the control of the regents of education, shall be paid to the state treasurer, and shall be credited by him to the proper educational institutions. At once on receiving moneys from any source the state treasurer shall notify the

secretary of the regents of education of the amount, the source from which received, and the fund to which credited.

552. Appropriation of funds belonging to the institutions under control of the regents of education. [Ch. 58, '97.] § 21. There is annually and perpetually appropriated to the regents of education for the exclusive and legal use of the educational institutions under their control all moneys received from their endowment land grant as interest or rent, all local collections from fees of any kind, or from rents or sales authorized, all United States money grants of any kind, all moneys derived from any source to be used by the regents of education for the proper and legal maintenance of the institutions under their control.

553. Methods of expenditure [Ch. 58, '97.] § 22. No expenditures shall be made except by express authority of the regents of education first obtained, and no indebtedness shall ever be permitted or incurred except against funds already available for such purpose, and no expenditure from any fund shall, under any circumstances, be made except for the legal purpose for which said fund exists and for the institution to which it belongs. The method in detail of making expenditures, purchases, etc., except so far as they are specified by section ten of this act, shall be left to the discretion of the regents of education.

554. The duty of the auditor of state. [Ch. 58, '97.] § 23. Whenever a properly audited and authenticated voucher of the regents of education is presented to the auditor of state, it shall be his duty to transmit promptly to the office of secretary of the regents of education his warrant for a corresponding sum on the state treasurer, unless said voucher shall overdraw the fund from which it is made payable.

555. Reports, etc. [Ch. 58, '97.] § 24. The regents of education shall on or before the fifteenth day of December previous to each biennial session of the legislature prepare and present to the governor of the state for his use and for the use of the legislature a full detailed report of all their doings for the preceding two years, with a statement of the work and the condition financially and educationally of all the institutions under their control, with such recommendations as they may desire to make, and with detailed estimates for legislative aid, if in their judgment any is needed. They shall also by themselves or their authorized representative, attend upon the sessions of the legislature whenever required so to do by a committee of either house. They shall also prepare, or cause to be prepared and transmitted at proper times, all reports required of them by the United States laws.

BOARD OF CHARITIES AND CORRECTIONS.

556. Appointment made by the governor. [Ch. 5, '90.] § 1. As soon as practicable after the passage of this act, and before the sixth day of March, eighteen hundred and ninety, the governor, by and with the consent of the senate, shall appoint five persons, residents of the state, any three of which commissioners shall not reside in the counties in which any of the public institutions of the state are located, who shall constitute a state board of charities and corrections, and the members thereof shall be known as the commissioners of said board.

557. Jurisdiction. [Ch. 5, '90.] § 2. Said board, when duly organized, shall have control of the penitentiary, insane hospital, school for the deaf and dumb, and the reform school of the state as hereinafter provided.

558. Term of office. [Ch. 5, '90.] § 3. One of the persons so appointed shall hold his office for one year, two for three (years), and two for five years as indicated by the governor in making the nominations, and all appointments thereafter, except to fill vacancies, shall be made for six years.

559. Commissioners must qualify and organize. [Ch. 5, '90.] § 4. Before entering upon their duties the said commissioner of charities and corrections shall take and subscribe an official oath for the faithful performance of their duties, and to support the constitution of the state, and of the United States, which shall be filed in the office of the secretary of state. They shall have power to elect a president and secretary out of their own number, and such other officers and agents out of their number as they may deem proper, and to adopt such by-laws and regulations for the transaction of business and the management of the affairs of the board, as they may deem expedient.

560. Powers and duties. [Ch. 5, '90.] § 5. The said commissioners shall have full power at all times to look into and examine the condition of the several institutions mentioned in section two of this act, financially or otherwise, to inquire and examine into their methods of instruction and the government and management of their inmates; the official conduct of all officers and employes of the same; the condition of the buildings, grounds, and other property connected therewith, and into all other matters pertaining to their usefulness and good management. And for these purposes they shall have free access to the grounds, buildings, and all books and papers relating to said institutions; and all persons now or hereafter in any manner connected with the same

are hereby directed and required to give such information, and afford such facilities for inspection, as the said commissioners may require. And any neglect or refusal on the part of any officer or person connected with such institution, to comply with the requirements of this section, shall be sufficient cause for removal of such officer, employee or person from any office or position held by such officer, employee or person. Said board of charities and corrections shall, in addition to the powers hereinbefore enumerated, have all such other and further powers as are now possessed or legally exercised by the several boards of trustees of each and all the institutions hereinbefore named. The board of charities and corrections shall advertise and call for bids at such time or season as may enable said board to procure fuel and other supplies needed in larger quantities at the most favorable prices; and they may require security to be given that such supplies will be furnished, and in such quantities, and at such times, as they may from time to time require.

561. Commissioners to visit state institutions — report. [Ch. 5, '90.]

§ 6. The said commissioners or a majority of them, are hereby authorized and required, at least once in each year, and as much oftener they may deem necessary, to visit each of the said institutions and ascertain whether the monies appropriated for their aid are, or have been economically and judiciously expended; whether the objects of the several institutions are accomplished; whether the laws in relation to them are fully complied with; whether all parts of the state are equally benefited by said institutions, and shall inquire as to the various other matters referred to in section five of this act, and shall report in writing to the legislature, at the beginning of each regular session of the same, the result of their investigations, together with such other information and recommendation as they may deem proper.

562. Report to the governor. [Ch. 5, '90.] § 7. Whenever any of said institutions require state aid for any purpose other than their usual expenses the said commissioners, or a majority of them, shall inquire carefully and fully into the grounds of such want, the purpose or purposes, for which it is proposed to use the same, the amount which will be required to accomplish the desired object, and into any other matters connected therewith. And in their biennial report, or whenever called upon by the governor, they shall give the result of such inquiries, together with their own opinions and conclusions relating to the whole subject.

563. Commissioners may administer oaths and examine witnesses.

[Ch. 5, '90.] § 8. The said commissioners, or any of them, are hereby authorized to administer oaths and examine any person, or persons, in relation to any matter connected with the inquiries authorized by this act.

564. Attendance upon session of legislature. [Ch. 5, '90.] § 9. The said commissioners, or some one of them, shall attend upon the session of the legislature whenever any committee of either house shall require their attendance.

565. Secretary of state to furnish blank books and stationery. [Ch. 5, '90.] § 10. The said board of commissioners shall be furnished by the secretary of state with journal, account books, blanks and stationery.

566. Commissioners not to be personally interested. [Ch. 5, '90.] § 11. No member of the said board shall be directly or indirectly interested in any contract for building, repairing or furnishing any of said institutions, nor shall any officer or employee of said institutions, or any of them, be interested in any manner in any contract for repairs or improvements upon any of said institutions, or in any contract for the furnishing supplies of any kind or nature, or in the letting of any contract whatever by said board of charities and corrections, nor shall any officer of any of said institutions be eligible to the office of commissioner on said board.

567. Secretary of board to keep a record — authenticated copies. [Ch. 5, '90.] § 12. Said board shall cause a record to be kept of its proceedings by its secretary or clerk; it shall have power to use an official seal and to alter the same at pleasure, and its proceedings and copies of all papers and documents in its possession or custody may be authenticated in the usual form, under its official seal and the signature of its president and secretary, which may be used as evidence in all courts and places in this state, in like manner as similar certificates by the secretary of state or any other public officer.

568. Meetings of board. [Ch. 5, '90.] § 13. All meetings of said board shall be public. A majority of the members shall constitute a quorum.

569. Legal investigation — duty of attorney general. [Ch. 5, '90.] § 14. If, in the opinion of said board, or any three members thereof, any matter in regard to the management of any institution under its supervision or any matter in regard to any inmate of any such institution, requires legal investigation, or action of any kind, notice thereof may be given by the board, or any three members thereof, to the attorney general, and it shall be his duty thereupon to make inquiry and take such proceedings in the premises as he may deem necessary and proper, and to report his action and the results thereof to the board without delay.

570. Compensation. [Ch. 5, '90.] § 15. The said commissioners shall receive three dollars per day for their services, and the actual expenses of each one of them while engaged in the performance of the duties of their office; and any actual outlay for any necessary aid or assistance required in examination or investigation, on being made out and verified by the affidavit of the commissioner making the charge, shall be paid monthly by the treasurer of the state, on the warrant of the auditor, out of any monies in the treasury not otherwise appropriated; *Provided*, that (an amount) not to exceed three hundred dollars per annum shall be allowed any commissioner as per diem compensation, except in the case of the secretary, who shall receive three dollars for each day actually and necessarily spent in the performance of his duties as such.

ARTICLE 11. INSURANCE OF PUBLIC BUILDINGS.

571. Property of state to be insured. It shall be the duty of the board of trustees, directors or regents, to cause to be insured in such insurance company or companies as may be approved by the governor, for the benefit of the state of South Dakota, the public buildings and contents, or institutions under their control or charge, respectively, for an amount not to exceed two-thirds their value, and for that purpose they are hereby authorized to expend such a sum as may be necessary, and upon presenting vouchers therefor to the auditor of the state of South Dakota, it shall be his duty to draw a warrant upon the treasurer of South Dakota in payment of the sum or amount so expended. [C. L. 402.]

572. Duty of governor. It shall be the duty of the governor of the state of South Dakota to cause to be insured all other public buildings and contents belonging to the state of South Dakota, for the benefit of the state of South Dakota, at not to exceed two-thirds their value and for that purpose the auditor shall draw his warrant upon the treasurer in payment of the premiums for such insurance. [C. L. 403.]

573. In case of loss. In the event of a loss occurring under any policy upon any public building insured under the provisions of this act, the money received from the insurance shall be used and expended by the governor, board of directors, trustees or regents, in the erection or repair of the building upon the site of the one injured or destroyed, and such building shall be occupied and used for the same purposes as the one damaged or destroyed. Policies under this act shall run in the name of the state of South Dakota and shall be for a term of three years. [C. L. 404.]

SYSTEM OF ACCOUNTS.

STATE AUDITOR AND TREASURER.

574. Auditor to keep account with counties. [Ch. 113, '91.] § 1. The state auditor shall keep an account with each organized county of the state, in which account each county shall be charged with the amount of tax due the state, and with all sums hereafter levied in each county for state purposes, and credited with all sums paid into the state treasury on account of such taxes.

575. County auditor to furnish abstract. [Ch. 113, '91.] § 2. He shall require county auditors to furnish him with an abstract of the tax lists of their respective counties when the same are completed, on such blanks as he shall prescribe.

576. County treasurer required to furnish quarterly statement. [Ch. 113, '91.] § 3. He shall require the several county treasurers to furnish him with a statement, attested by the county auditor, on the first day of March, June, September and December of each year, and at such other times as he may deem expedient, showing the amount of state taxes collected, also all penalty and interest on the same, also amounts refunded, treasurer's commission and cash balance at the date designated, which statement shall be forwarded to the state auditor within five days after the date statement is called for.

577. State auditor to draw on county treasurer and deliver to state treasurer. [Ch. 113, '91.] § 4. The state auditor shall after receiving the quarterly statement or other statements provided for in section three (3) of this act, draw and deliver to the state treasurer, an order on each county treasurer for the total amount so certified as collected for the state, less refunds and commissions only, and charge the state treasurer with the same, giving the county credit for the amount, and sending to the county auditor of each county a duplicate of such order or draft.

578. Public officers. [Ch. 113, '91.] § 5. The state treasurer shall notify each county treasurer of the amount of such draft or order, and the county treasurer shall forward to the state treasurer immediately after receiving such notice the total amount of the tax collected for the state, less only refunds and treasurer's commissions, together with an itemized statement of the same, upon blanks furnished by the state treasurer, and upon receipt of the same the state treasurer shall forward such draft or order to the county treasurer with his endorsement,

and such draft or order shall be the county treasurer's receipt for the amount stated.

State is proper party to sue county treasurer for taxes collected by him. *State v. Welbes*, S. D. ; 75 N. W. Rep. 820.

579. Failure to comply — penalty. [Ch. 113, '91.] § 6. Any county treasurer or county auditor failing or neglecting to comply with the requirements of this act shall be deemed guilty of a misdemeanor, and the state's attorney of the county shall prosecute such treasurer or auditor upon information of the state auditor, and all fines shall be paid into the county treasury, and shall be placed to the credit of the state fund.

580. State auditor to draw on corporations in favor of treasurer for tax due. [Ch. 113, '91.] § 7. All telephone, telegraph, express and sleeping car companies or other corporations required by law to pay taxes or assessments to the state treasurer shall report to the state auditor the sums or amounts upon which such tax or assessment is required by law to be levied, and the state auditor shall draw on such companies or corporations for the sum due, as levied and assessed by the state board of assessment and equalization, making the draft payable to and delivering the same to the state treasurer and charging him with the amount of such draft.

581. Duplicate receipts to be taken. [Ch. 113, '91.] § 8. Every state officer required by law to pay moneys into the state treasury shall take duplicate receipts for such payments, one of which shall be filed with the state auditor, who upon the receipt of the same shall charge the treasurer with the amount thereof.

582. Apportionment to be made by auditor and treasurer. [Ch. 113, '91.] § 9. The apportionment of all moneys paid into the state treasury any part of which is required by law to be paid to the several counties, or to the municipal corporations, shall be made by the auditor and treasurer. The auditor shall and he is hereby authorized to draw his warrants on the state treasurer for the amounts found due each county or corporation, and forward the same to the treasurer of such county or corporation, and at the same time send a written notice to the auditor of such county or corporation stating the amount so apportioned.

583. Money to be paid out only on auditor's warrant. [Ch. 113, '91.] § 10. Moneys shall be paid from the state treasury only upon the auditor's warrant, and each warrant shall specify upon what fund or from what appropriation such warrant is to be paid. *Provided, however*, That the treasurer may redeem outstanding bonds, pay interest on bonds when due, and interest on warrants without the auditor's war-

retaining such bond or interest coupon as his voucher for such payment until the next succeeding settlement, and endorsing on each warrant the amount of interest paid thereon.

584. Auditor to keep account current with treasurer. [Ch. 113, '91.] § 11. The auditor shall keep an accurate account current with the treasurer, charging him with all moneys received, and crediting him with all sums paid out, upon the surrender of the vouchers for such payments.

585. Treasurer and auditor to settle monthly. [Ch. 113, '91.] § 12. The treasurer and auditor shall on the first day of each month have a full settlement of the business of the preceding month, at which settlement the treasurer shall turn over to the auditor all vouchers for payments made by him, taking the auditor's receipt for the same.

586. Auditor and treasurer to keep separate accounts. [Ch. 113, '91.] § 13. The auditor and treasurer shall each keep separate accounts with the several appropriations made by the legislature, and also with each fund created by the sale of bonds, and each current or permanent fund created by law.

587. Auditor to copy treasurer's assessment ledger. [Ch. 113, '91.] § 14. In order to comply with the provisions of section one (1) of this act, the auditor is hereby required to copy or transfer the balance of the several accounts in the "Treasurer's Assessment Ledger," in opening the accounts provided for in said section.

COMMISSIONER OF SCHOOL AND PUBLIC LANDS.

588. Duty of commissioner of school and public lands — accounts, how kept. [Ch. 173, '95.] § 1. The commissioner of school and public lands shall keep an accurate account of all moneys due or to become due the state, on account of sales and leases of school and public lands and the fees derived therefrom, and the interest arising from the loaning of the permanent school fund. He shall keep accurate accounts with the state treasurer in which he shall charge said state treasurer with all moneys received by him and credit him with all sums paid out according to law, showing separately the amounts received and paid out for the various purposes provided by law. He shall also keep separate accounts between the state and each county which shall show the receipts and payments for each purpose herein named.

589. Shall have supervision of funds. [Ch. 173, '95.] § 2. He shall have supervision of the collection of all moneys due the state for the purposes aforesaid and of the apportionment and distribution of said funds to the several counties and public institutions of the state.

590. Shall furnish statements to county treasurer, when. [Ch. 173, '95.] § 3. He shall on or before the fifteenth day of December of each year furnish to the treasurer of each county a full statement of the principal and interest on sales and rental on time leases falling due in said county on the first day of January following, and on or before the fifteenth day of June and December in each year he shall furnish each county treasurer with a statement of the amount of interest on permanent school fund which will become due from the county to the state on the first days of July and January following; and for the purpose of computing such interest each county shall be deemed to have received its apportionment of the permanent school fund ten days after the execution and mailing of the vouchers therefor by the commissioner of school and public lands.

591. Statement of county treasurers — what to contain. [Ch. 173, '95.] § 4. He shall require the several county treasurers to furnish him with a statement, attested by the county auditor, on the first day of March, June, September and December of each year, and at such other times as he may deem expedient, upon blanks furnished by the commissioner of school and public lands. Each statement shall show the amount of money on hand arising from the sale of school and public lands, deferred payments, full payments, interest on deferred payments, leases of school lands, leases of endowment lands, term leases of each class of lands, fees for leases, contracts and patents, and interest on the permanent school fund due from the county to the state; *Provided*, That said treasurers and auditors shall not include in said statements any moneys received upon leases or sales of land not yet approved by the governor and the commissioner of school and public lands. Said statement shall be forwarded to the commissioner of school and public lands, within five days after the date on which such statement is called for.

592. Commissioner to furnish state treasurer with drafts for money due state. [Ch. 173, '95.] § 5. The commissioner of school and public lands shall immediately after receiving the statements provided for herein, draw and deliver to the state treasurer a draft on each county treasurer for the full amount shown to be due the state. Said draft shall specify the various funds to which said money belongs, and he shall at the same time send the county auditor of each county a duplicate of such draft.

593. Treasurer to collect funds — accounts — how kept. [Ch. 173, '95.] § 6. The state treasurer shall immediately notify each county treasurer of the amount of such draft, and the county treasurer, immediately after receiving such notice, shall forward to the state treas-

urer the total amount specified in said draft together with a duplicate of the statement provided for in section four (4) hereof, and upon receipt of the amount the state treasurer shall notify the commissioner of school and public lands, who shall thereupon charge said state treasurer with the same, and credit the proper county and funds, and the state treasurer shall also immediately forward said draft to the county treasurer, properly receipted, and the same shall be the county treasurer's receipt for the amount paid.

594. Moneys not to be paid except upon drafts. [Ch. 173, '95.] § 7. No moneys belonging to any of the funds herein specified shall be forwarded to the state treasurer by any county treasurer, excepting upon the draft of the commissioner of school and public lands as herein provided. But each county treasurer shall on the first day of each month forward to the commissioner of school and public lands a duplicate of each receipt issued by him during the preceding month for any of the purposes herein named excepting in case of the full payment of principal and interest upon sales of school and public lands, in which case he shall forward such duplicate receipts on the date issued.

595. Penalty for violating the provisions of this act. [Ch. 173, '95.] § 8. Any county treasurer or county auditor failing or neglecting to comply with the requirements of this act at the time required shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than one hundred (100) dollars. The state's attorney of the county shall prosecute such treasurer or auditor upon information of the commissioner of school and public lands. All fines collected under this act shall be paid into the county treasury and shall be placed to the credit of the interest and income fund and shall be reported to the commissioner of school and public lands upon the statements provided for in section four hereof.

596. Settlements. [Ch. 173, '95.] § 9. The commissioner of school and public lands and the state treasurer shall, on the first day of each month, have a full settlement of the business of the preceding month.

597. Commissioner may appoint deputy — duties of. [Ch. 5, '95.] § 1. That the commissioner of school and public lands shall have power, when in his opinion it is necessary, to appoint a deputy commissioner of school and public lands, for whose acts the commissioner of school and public lands shall be responsible. Said appointment shall be made in writing and shall be revocable in writing at the pleasure of the commissioner of school and public lands. Said deputy shall take and subscribe to the usual oath of office as required by law. Said appointment

and oath shall be filed with the secretary of state. In case of the absence or disability of the commissioner of school and public lands the deputy shall perform all and the several duties required by the commissioner of school and public lands.

PUBLIC OFFICERS.

598. Reports — penalty for failure to make. [Ch. 98, '91.] § 1. Any county, city, village, civil township, school township or school district officer, who is required by law to make an official report to any other county, city, village, civil township, school township or school district officer, board, tribunal or state officer, and who shall wilfully neglect to make such report, or fail to perform such official duties, shall forfeit and pay to the state of South Dakota a penalty of not less than ten (\$10.00) nor more than fifty (\$50.00) dollars to be recovered from such delinquent officer, or from him and the sureties upon the official bond, in a civil action, to be brought by the state's attorney in any court of record having jurisdiction.

599. Prosecutions, how made. [Ch. 98, '91.] § 2. It shall be the duty of the board of county commissioners and the state's attorney in each county to examine the records of the several county officers, at the end of the officer's term of office, to see that they have been properly kept. Any failure must be remedied or it shall become the duty of the state's attorney to prosecute any such officer for neglect as provided in section one. It shall also become the duty of the city council, board of aldermen, village trustees, civil township supervisors, school township or school district board, as the case may be, to examine the records of their several officers in a like manner, or upon complaint by the proper board, the state's attorney shall prosecute as provided in this section relating to county officers.

600. Necessary blanks and records to be furnished. [Ch. 98, '91.] § 3. It shall be the duty of the county, city, village, civil township, school township or school district officer to provide, at the expense of the county, city, village, civil township, school township or school district, such blanks and records as are necessary for making the proper record, and the transaction of any official business connected with his office.

REPORTS.

601. Report of state auditor to contain what — appropriation for. [Ch. 160, '95.] § 1. The state auditor shall submit a report to the gover-

nor of the state on or before the fifteenth day of December in each year which shall show:

1. A statement of dates, number and amount of each warrant; the person in whose favor, and on what fund, each warrant was drawn; the total amount of warrants redeemed and returned to him by the state treasurer; a statement of account of the several funds and appropriations, which shall show the sums appropriated for each fund, the amount of warrants on each fund, and the unexpended balance of the same for the fiscal year ending with the thirtieth day of June preceding.

2. A report of the proceedings of the state board of assessment and equalization for the current year, together with an abstract of the assessment as equalized by the state board of assessment and equalization.

3. A statement in tabular form of the condition and business of insurance companies doing business in this state the preceding year, and such other information as is required by the insurance laws of this state to be published.

4. Such remarks on the finances of the state as he shall deem proper, which report shall also include any and all other information or tables necessary to be published.

5. He shall have printed one thousand copies of said report, and shall deliver to the secretary of state one hundred copies of the same unbound, to be bound in the biennial copy of public documents of the state of South Dakota; one hundred and thirty copies bound in cloth for the use of the members of the succeeding session of the legislature of the state of South Dakota, and for the purpose of carrying out the provisions of this section, there is hereby appropriated annually out of the general fund of the state, not otherwise appropriated, one thousand (1,000) dollars, or so much thereof as is necessary.

602. Report of state treasurer — to contain what — appropriation for.
[Ch. 160, '95.] § 2. That the state treasurer shall submit a report to the governor of the state on or before the fifteenth day of December in each year, which shall show a full and true exhibit of the state of the public accounts and funds as contemplated in section twelve, article eleven of the constitution, the amount by him received, the amount paid out during the preceding fiscal year ending on the thirtieth day of June, and the balance remaining in the treasury. He shall have printed five hundred copies of said report, and shall deliver to the secretary of state one hundred copies of the same unbound, to be bound in the biennial copy of public documents of the state of South Dakota, one hundred and thirty copies bound in cloth for the use of the members of the succeeding session of the legislature of the state of South Dakota, and for the purpose of carrying out the provisions of this section, there

is hereby appropriated annually out of the general fund of the state not otherwise appropriated five hundred (500) dollars, or so much thereof as is necessary.

603. Report of secretary of state — to contain what. [Ch. 160, '95.]

§ 3. The secretary of state shall submit to the governor of the state on or before the fifteenth day of December preceding the biennial session of the legislature of the state of South Dakota, a report covering the business transactions of the different branches of his office during the biennial period ending the thirtieth day of June preceding, an itemized statement of the fees collected and paid into the state treasury, tabular statements giving the votes by counties cast throughout the state for all presidential, congressional, state and judicial officers at general elections held subsequent to his last biennial report as appear on file in the records of his office. He shall have five hundred copies of said report printed, reserving one hundred copies thereof to be bound in the biennial copy of public documents of the state of South Dakota.

604. Report of attorney general — commissioner of school and public lands — superintendent of public instruction — public examiner — board of regents and charities and corrections. [Ch. 160, '95.] § 4. On or before the fifteenth day of December preceding the biennial session of the legislature of the state of South Dakota, the attorney general, commissioner of school and public lands, superintendent of public instruction, public examiner, the board of regents and the board of charities and corrections shall each submit to the governor of the state a report covering the biennial period ending the thirtieth day of June preceding, showing the business transactions of their several offices and boards, and each of said officers and boards shall have five hundred copies of their report printed, one hundred copies of which shall be delivered to the secretary of state to be bound in the biennial copy of public documents of the state of South Dakota.

605. Reports of all other officials and boards. [Ch. 160, '95.] § 5. On or before the fifteenth day of December preceding the biennial session of the legislature of the state of South Dakota, all other state officers, boards of control of public institutions, boards of railroad commissioners, and other officers of whatsoever kind who are by law required to make a report, shall file with the governor of this state a copy of their report for his inspection and transmittal to the legislature, but none of such reports shall be printed unless the legislature shall make special provisions for the same.

606. Public documents — duty of secretary of state. [Ch. 160, '95.] § 6. Immediately after the adjournment of each session of the legis-

lature, the secretary of state shall have one hundred copies of the public documents of the state of South Dakota bound in suitable binding, each of said books to contain one copy of the reports of all state officers and boards filed with him for that purpose, and one copy of each report ordered printed by the legislature. It shall be the further duty of the secretary of state to select one copy of said reports which shall ever be kept in the state library for public inspection.

PUBLIC FUNDS.

607. Deposits to be kept in name of state treasurer. [Ch. 152, '95.]

§ 1. That all moneys belonging to the state, deposited in banks by the state treasurer, shall be deposited not to his credit as an individual, but in his name as state treasurer, and not otherwise.

608. Bank account book. [Ch. 152, '95.] § 2. That whenever the state treasurer shall have money on deposit or an account of public moneys with any bank or banking institution, he shall keep in his office a book known as the "bank account book," in which shall be kept a complete and correct account with each bank in which the public moneys are deposited of all public moneys deposited therein, and that this book shall at all times be open to the inspection of the governor or any person entitled to know the condition of the public funds.

609. Treasurer to make statement — to contain what — where filed. [Ch. 152, '95.] § 3. That at the close of the last business day in each month the state treasurer shall make and deliver to the governor a statement in writing, signed and certified by him as correct, showing the exact condition of the public funds in his possession, giving the names of each bank in which he has deposits and with which he keeps an account, showing the amount in each bank standing to the credit of the state; which statement shall be preserved by the governor and filed in the office of the secretary of state for safe keeping. The state treasurer shall also at the same time exhibit to the governor all certificates and other evidences of deposit which he may have in his possession of public moneys deposited in any bank or banking institution with which he does not have open accounts. *Provided*, That the governor may also at any other time require of the state treasurer a like statement to be made of the amount and condition of the public moneys deposited as aforesaid and the exhibition to him as aforesaid of such certificates and evidences of deposit, which statement shall also be preserved and filed for safe keeping as hereinbefore specified.

610. Banks to report to governor — statement to contain what. [Ch. 152, '95.] § 4. It shall be the duty of every bank, banker and banking institution having an account with the state treasurer or having public moneys on deposit, to make and transmit to the governor, on the first day of each and every month a true, correct and itemized statement in writing, signed and certified as correct by such banker or the president, cashier or chief officer of such bank or banking institution, showing the moneys received by and withdrawn from such bank or banking institution during the last preceding month, the amount of public money on deposit on the last day of said preceding month, and whether held subject to check or on certificate or time deposit. *Provided,* Any bank, banker or banking institution having an account with the state treasurer or having public moneys on deposit shall at any time upon demand of the governor furnish a like statement showing the amount of moneys received by and withdrawn from such bank or banking institution from the first day of the current month to and including the date of such statement the amount of moneys on deposit on the date of such statement and whether held subject to check or on certificate or time deposit

611. Duty of state treasurer in case bank fails to make report. [Ch. 152, '95.] § 5. That if any bank, banker or banking institution shall refuse or shall fail for the space of three days after the close of any month or after demand made by the governor to make or transmit such statements as are provided for in section four of this act, it shall be the duty of the state treasurer forthwith to withdraw from said bank all such moneys then on deposit and discontinue further deposits with such bank, banker or banking institution.

611a. Failure of treasurer to comply is misdemeanor. [Ch. 152, '95.] § 6. Every state treasurer who shall refuse or for the space of three days shall fail to comply with the provisions of this act shall be guilty of a misdemeanor.

612. Construction of this act not to imply what. [Ch. 152, '95.] § 7. That nothing in this act shall be so construed as to imply any consent on the part of the state to the deposit of any public money in any bank or banking institution, or with any banker or other person or corporation whatsoever.

CARE OF PUBLIC FUNDS.

613. Duty of county treasurer. [Ch. 104, '97.] § 1. The county treasurer of each and every county in this state shall deposit, and at all times keep on deposit for safe keeping in state, private or national banks

doing business in this state and of approved and responsible standing, the amount of money in his hands belonging to the several funds of the county treasurer. Any of such banks may apply for the privilege of keeping such funds, upon the following conditions, and shall state in the application the rate of interest they will pay on such deposits and the amount of money desired. First. All money shall be deposited in the name of the treasurer as county treasurer and for all such deposits he shall take a receipt in duplicate, one to be retained in his office and the other filed forthwith with the county auditor, who shall enter the amount in a book kept for that purpose, and all checks drawn against such deposits shall be credited on the same book by the auditor, before delivery to the treasurer, which book shall be kept in such a manner as to show, at all times, the amount of money on deposit with said bank or bankers. All such deposits shall be subject to payment when demanded by the county treasurer on his check, countersigned by the county auditor, and all banks receiving and holding such deposits as aforesaid shall be required to pay to the county for the privilege of keeping such deposits, interest amounting to not less than two per cent. and not more than four per cent. per annum upon the amount so deposited as hereinafter provided, and subject always to such regulations as are imposed by law, and such rules as may be adopted by the board of county commissioners for holding and receiving such deposits; and the said board of county commissioners shall hold the right to reject any and all applications, provided, that if the board of county commissioners, at any time after having made such designation, for good and sufficient cause, deem the security given insufficient, they may require a new bond; and if in their opinion the public interest require, they may vacate, revoke or modify their designation of a depository in any way; and may again designate a depository or depositories as above provided. Second. The amount to be paid by any and all banks under the provisions of this act for the privilege of keeping public funds on deposit shall be computed on the daily balance of the public moneys kept on deposit therein, and shall be paid to the county on the first day of each month for the preceding month, and the amounts and sums paid to the county for the privilege of keeping the same on deposit as aforesaid shall be credited by the auditor and treasurer to the account of the county general fund.

614. Depositaries to give bonds. [Ch. 104, '97.] § 2. For the security of the fund so deposited under the provisions of this act, the board of county commissioners shall require all such depositaries to give bonds with five or more freeholders of the state who own unencumbered real estate therein to an amount in value of at least twice the amount of the bond required as sureties, such sureties not to be stockholders of, or

owners of such depositories, unless they are satisfied upon full investigation that their responsibility would in no wise be affected by the failure of the bank or banker in behalf of which said stockholder or owners sign as sureties. Such bond shall be given for the safe keeping and payment of such depositories and the accretions thereof, and shall run to the county, to be approved by the board of county commissioners, and conditioned that such depository will at the end of each and every month render to the county auditor a statement showing the several daily balances of the county held by it during the month and will, on the first day of each month, report to the auditor the amount of the accrued interest credited to the county, and that the said funds, together with the accrued interest, will be paid upon the check of the county treasurer countersigned by the county auditor, upon presentation, which bond shall be filed in the office of county auditor.

614a. Amount deposited with each bank not to exceed one-half the bond. [Ch. 104, '97.] § 3. The county treasurer shall not have on deposit at any bank, at any time, more than one-half of the amount of the bond as herein provided, and shall keep the amounts in the several depositories as nearly equal as possible, taking in consideration the maximum amount to be fixed upon by the board of county commissioners which he may keep in each bank. Any bank may make application for such part of the public funds as it may desire, but the board of county commissioners shall determine the amount it shall receive, which shall not be greater than the amount applied for nor more than one-half of its capital stock.

615. Making of profits prohibited. [Ch. 104, '97.] § 4. The making of profit, directly or indirectly, by the county treasurer out of any money in the county treasury, the custody of which the treasurer is charged with, by loaning or depositing or otherwise using or depositing the same in any manner, or the removal of the county treasurer or by his consent, of such money or a part thereof out of the vault of the treasurer's department, or in the legal depository of the same, except for the payment of warrants legally drawn or for the purpose of depositing the same in banks elected as depositories under the provisions of this act, shall be deemed guilty of felony, and upon conviction thereof shall be subject to punishment in the state penitentiary for a term of not more than two years or a fine of not exceeding five thousand dollars (\$5,000), and shall also be liable under and upon his official bond for the profits realized by such unlawful using of such funds.

616. Indictment for neglect. [Ch. 104, '97.] § 5. If the county treasurer shall willfully fail or refuse at any time to keep the public funds in the depositories as herein provided, or shall fail to do or per-

form any act required of him by this act, he shall be guilty of a misdemeanor and subject to indictment therefor, and upon conviction thereof he shall be sentenced to pay a fine of not exceeding five thousand dollars (\$5,000). It shall be the duty of the state's attorney to enter and prosecute to final determinations of all suits for the recovery of any penalty arising under the condition of any bond required to be given by this act.

616a. Amount of bond — duty of county auditor. [Ch. 104, '97.]

§ 6. The bond of the county treasurer shall be in such sum as may be fixed by the board of county commissioners, and the county treasurer shall not have more money in his office at any one time than one-half the amount of his bond, and it shall be the duty of the county auditor from time to time to examine the daily balance book of the county treasurer for the purpose of ascertaining the amount kept on hand.

617. Requisition of auditor. [Ch. 104, '97.] § 7. For the matter of convenience in transacting business it shall be lawful for the county treasurer, when in need of funds for the purpose of paying small warrants without issuing checks, to make a requisition on the county auditor for funds for such purpose for an amount not to exceed five hundred dollars (\$500), which shall be drawn on the check of the county treasurer, payable to himself, and countersigned by the county auditor, but no check shall be so countersigned if the auditor has reason to believe that the money is wanted for purposes other than as herein provided.

617a. Treasurer not liable on his bond for money deposited. [Ch. 104, '97.] § 8. No treasurer shall be liable on his bond for money on deposit in any bank as herein provided, if said bank has given bonds and has been approved by the board of county commissioners and the amount does not exceed the amount allowed to be kept at such bank.

618. Auditor countersign checks. [Ch. 104, '97.] § 9. If the county auditor shall countersign any check in blank or shall countersign any check for any purpose other than in payment of warrants legally drawn, or as provided in section seven of this act, he shall be deemed guilty of felony, and upon conviction thereof shall be sentenced to the penitentiary for a term not less than one year nor more than twenty years.

SAFETY OF STATE FUNDS.

619. Treasurer designate depository. [Ch. 106, '97.] § 1. The treasurer of the state of South Dakota may in his discretion, as soon as practicable after the passage of this act and from time to time there-

after designate, by his certificate in writing a sufficient number of banks and banking associations to be depositaries of the public moneys of the state of South Dakota under the provisions of this act.

620. Bond of depositary. [Ch. 106, '97.] § 2. Every such depositary shall, before receiving on deposit any moneys belonging to the state, deposit with the auditor of the state of South Dakota bonds of the United States, or bonds or securities of the state of South Dakota, or both, to an amount not less than twenty-five thousand dollars (\$25,000) nor less in any case than the amount of moneys of the state to be deposited with such depositary, which bonds and securities shall be held by the said auditor as a special pledge and security for the prompt and full payment of all such public moneys as the treasurer may from time to time deposit with such depositary, as the same shall be required to be paid.

620a. Bonds and securities registered by state auditor. [Ch. 106, '97.] § 3. Such bonds and securities shall be registered by the auditor of said state, in a book to be kept for that purpose and shall be held by him in trust; first, for the use and benefit of the state of South Dakota, as a special security for any and all moneys of the state deposited by the treasurer of the state with such depositary; second, for the use and benefit of the treasurer of said state as his interest may appear, and third, for the use and benefit of such depositaries as their interests may respectively appear.

620b. Securities may be returned by auditor, when. [Ch. 106, '97.] § 4. The whole or any part of the bonds or securities so deposited may be returned by the auditor to the depositors upon the written certificate of the treasurer, that the funds on deposit with such depositary have been reduced by payment upon the same, below the amount of said bonds and securities; Provided, that there shall at all times be kept by the auditor an amount of the said bonds and securities of such depositary equal in their face value to the amount of money the state, remaining on deposit with such depositary.

621. Deposit of funds. [Ch. 106, '97.] § 5. The treasurer of the state shall from time to time deposit all of the moneys belonging to the state of South Dakota, coming to his hands, with such designated depositaries, as have furnished the securities herein provided for, and have otherwise complied with the provisions of this act, so far as the securities thus furnished by said depositaries will cover the same, and he may in his discretion deposit no state moneys elsewhere so long as the designated depositaries furnish the requisite amount of government and state bonds and securities to cover the amount of public moneys in his hands.

621a. Securities may be summarily sold, when. [Ch. 106, '97.] § 6. If at any time any such depository having such public moneys on deposit shall fail to pay, when due any draft, bill or check of the state treasurer, drawn thereon, then the said treasurer may summarily sell at public sale, all or so much of the said bonds and securities as he may deem necessary or proper to reimburse the state for the moneys so deposited and unpaid, and the costs and expenses of such sale, first giving the same notice thereof as is required in sales of personal property upon execution. Such sale may be at the capital of the state of South Dakota, or in the city or town where the said defaulting depository is situated, or at any other place within or without the state, upon which the treasurer and said depository may agree.

621b. Liability of treasurer and bondsmen not affected. [Ch. 106, '97.] § 7. Nothing in this act contained shall be held or construed to relieve the treasurer or his bondsmen from any liability on the said treasurer's official bond or reduce the amount thereof or in any other way impair the obligations of the same.

622. Auditor give special bond — rules. [Ch. 106, '97.] § 8. The auditor of the state shall give a special bond, running to the state of South Dakota, with sureties to be approved by the governor, in the sum of fifty thousand dollars, conditioned for the safe keeping and due delivery of the bonds and securities thus deposited with him.

622a. State treasurer to make rules and regulations. [Ch. 106, '97.] § 9. The state treasurer is hereby authorized to make from time to time such rules and regulations as may be necessary to carry this act into execution.

CHAPTER 8. THE JUDICIARY.

ARTICLE 1. SUPREME COURT.

SUPREME COURT REPORTER.

623. Appointment of reporter. [Ch. 156, '93.] § 1. The supreme court shall appoint a person of known integrity, experience and learning in the law, reporter of the decisions thereof, and such reporter shall hold his office for the term of six years, unless sooner removed by the court; and shall be deemed an officer of the court for such purpose.

624. Reporter must qualify and execute bond. [Ch. 156, '93.] § 2. The reporter shall execute a bond to the state, with at least two sufficient sureties, to be approved by the secretary of state, in the sum of two thousand dollars, conditioned for the faithful performance of his official duties, and shall further take and subscribe an oath or affirmation to be

filed with his bond in the office of the secretary of state, that he will support and defend the constitution of the United States, and the constitution of this state, and that he will faithfully perform the duties of his office.

625. Duties of reporter. [Ch. 156, '93.] § 3. When the opinions of the supreme court are filed, and the minutes thereof entered by the clerk, the reporter may take and retain the same with the abstracts of record and briefs of counsel filed therein, for such reasonable time as he may require to prepare the report thereof, when they shall be returned to, and remain in the office of the clerk. The reporter shall make careful and accurate reports of all cases decided and determined by the supreme court. He shall report all the opinions filed in each case, and the points and authorities submitted by counsel, with a statement of facts more or less full, according to their relative importance. The report of each case shall contain concise head notes of the points decided and a statement of the facts taken from the record, when the same are not fully given in the opinion of the court, and the names of counsel. He may in his discretion add a brief note, referring to prior adjudications. All the volumes hereafter published shall bear upon the back thereof the uniform title of "South Dakota Reports," the number of the volume commencing with one, and the year, or the years in which the decisions therein reported were rendered, and no other name or device, all numbers to be expressed in Arabic numerals.

626. Publication. [Ch. 156, '93.] § 4. It shall be the duty of the reporter within sixty days after the judges of the supreme court shall direct that the publication of a report be made, to furnish and deliver at his office at the seat of government, to the person, persons or corporation having the contract with the state for publishing the same, copies of the same. *Provided*, That each volume of said reports shall contain from six hundred and fifty to seven hundred pages as nearly as may be, exclusive of the table of cases and index; of the form and style of volume six, of the Dakota Territorial Reports. The publishers shall furnish to the reporter, as soon as issued, three copies of the revised proof sheets of each volume for correction and approval by the judges of the supreme court and shall cause such corrections to be made as shall be indicated therein by said judges. Each of said volumes shall be printed on sixty (60) pound book paper of good quality, and bound neatly and substantially in full sheep binding. The workmanship and quality of material shall in every particular be equal to volume six, of the Dakota Territorial Reports, and shall be approved and accepted by a majority of the judges of the supreme court.

627. Copyright shall be the property of the state. [Ch. 156, '93.] § 5. The supreme court reporter shall have no pecuniary interest in such reports, but the same shall be published under the contract to be entered into by the secretary of state, with the approval of the judges of the supreme court, with the person, persons or corporation who shall agree to publish and sell the same on the terms most advantageous to the people of the state, at a price not to exceed three dollars per volume. The copyright of all reports of the supreme court shall be the property of the state.

628. Secretary of state shall advertise for proposals. [Ch. 122, '99; ch. 156, '93.] § 6. The secretary of state shall immediately after this act takes effect, advertise weekly in four different newspapers, in different localities in this state for the term of six weeks, that sealed proposals will be received at the office of the secretary of state, for printing, binding and selling all reports published during the term ending the first day of October, 1906, at a certain rate per volume, to be stated in said proposals, not exceeding the maximum price, and in accordance with the provisions of this act. And the secretary of state shall, commencing on the first week in July, 1906, and every eight years thereafter advertise weekly in four different newspapers in different localities in this state, for the term of six weeks, that sealed proposals will be received at the office of the secretary of state for printing, binding and selling the said reports published during the term of eight years next succeeding the first day of October of said year, at a certain rate per volume, to be stated in said proposal, not exceeding the maximum price fixed by this act, and in accordance with the provisions of this act.

629. Bidders to make a deposit. [Ch. 156, '93.] § 7. Each bidder shall deposit with the state treasurer the sum of five hundred dollars before making his proposal, to be forfeited to the state in case he shall not make a contract according to such proposal, if accepted and according to the requirements of this act, and shall take a receipt from the treasurer and deposit the same with his proposal, and upon entering into the contract herein provided, or upon the proposal being rejected, the said sum shall be returned.

630. Contract with the state. [Ch. 122, '99; ch. 156, '93.] § 8. The successful bidder shall enter into a contract that he will publish the supreme court reports of the state of South Dakota, of the quality, style and character provided in this act, that he will publish and deliver to the secretary of state at the seat of government, two hundred

and fifty copies at the contract price, at the earliest practicable time, and within ninety days after the delivery of the manuscripts for any one copy of such reports to the publishers; that he will at all times keep the same for sale in the state of South Dakota, to the residents of this state, at the contract price, in suitable quantities, at the seat of government in the state; that he will furnish the state any number of additional copies that may be required at such contract price; and the contract shall fully provide for the carrying into effect all the provisions of this act, and shall be made within thirty days after he is notified of the acceptance of his proposal.

631. Publisher's bond. [Ch. 156, '93.] § 9. The successful bidder shall, at the time of making his contract, execute and file with the treasurer of the state a bond, in the penal sum of ten thousand dollars, conditioned to fulfill such contract in all particulars, with at least two sufficient sureties, residents of this state, to be approved by the secretary of state. Such bond shall, by its terms be joint and several, as to the obligations of the persons executing it. If the successful bidder shall fail to perform his contract, or shall forfeit the same for any cause, the secretary of state shall relet the contract as soon thereafter as possible; *Provided, however,* That such bidder, in lieu of sureties to such bond, may deposit therewith bonds of the United States, payable to the bearer, amounting to not less than ten thousand dollars. *Provided, further,* That the secretary of state shall whenever he shall deem it necessary require additional sureties upon said bond.

632. Conditions of contract. [Ch. 122, '99; ch. 156, '93.] § 10. The contract of the successful bidder required by this act shall contain, among others, the following conditions on his part.

First. That he will not take out in his own name, nor procure to be taken out in the name of any person other than the secretary of state of this state, a copyright upon any volume of the supreme court reports published under such contracts; and that upon any breach of this covenant he will pay to the treasurer of this state the sum of two thousand dollars as liquidated damages.

Second. That in case it shall be determined in any action upon the bond of such contractor, that he has failed in any respect to comply with the provisions of this act, or his contract, the court in which said action is tried may as a part of the judgment, decree a cancellation of such contract.

633. Salary of reporter. [Ch. 156, '93.] § 11. The supreme court reporter shall receive an annual salary of eight hundred dollars payable quarterly upon the certificate of the judges of said court, that he has properly performed the duties of reporter as required by this act.

634. Records accessible. [Ch. 156, '93.] § 12. Nothing in this act shall be construed to prevent the free access by any person, to records of the supreme court, and to all opinions, printed abstracts and briefs filed, for the purpose of publishing the same as a matter of private enterprise.

635. Report may be received as evidence. [Ch. 156, '93.] § 13. All state reports, published by said reporter under this act, shall be considered and received in all courts of this state as evidence of the decisions of the supreme court.

636. Distribution of reports. [Ch. 156, '93.] § 14. The copies of the state reports received by the secretary of state under this act shall be disposed of by him as follows: Two copies of each volume to the congressional library and the library of the supreme court of the United States; one copy to the library of each state and territory in the United States, to each judge of the supreme and circuit courts in this state, to the judge of the United States court for the district of South Dakota, to the clerk of the supreme court and to the attorney general, fifty copies to the state library, to be and remain therein as a part thereof, one copy to each county judge, and one copy to the state's attorney of each county in the state, and the remaining copies shall be collected and deposited in the state library and such volumes as are not otherwise needed, may, with the approval of the judges of the supreme court, be exchanged for other books on law or equity, or reports of other states.

CLERK OF THE SUPREME COURT.

637. Qualification and bond. [Ch. 74, '90.] § 1. The clerk of the supreme court, before he enters upon the duties of his office, shall take and subscribe an oath for the faithful discharge of his duties and execute a bond to the state, with one or more sureties to be approved by the secretary of state, in the penal sum of one thousand dollars, conditioned upon the faithful performance of his duties, which bond shall be for the use of the state, and suit may be brought thereon in the name of the state, said bond and said oath shall be filed in the office of the secretary of state. He may appoint a deputy, who shall take and subscribe the oath required by law, which shall be filed in said court; but the clerk shall be responsible for the acts of his deputy.

638. Shall procure records, rooms, etc. [Ch. 74, '90.] § 2. The said clerk, unless otherwise provided by law, shall procure the necessary records, stationery, lights, rooms, fuel and furniture, for the use of the supreme court, upon the approval of the secretary of state. The expenses thereof shall be paid out of the state treasury by the proper accounting officers of the state, when the same shall have been duly audited in the manner provided by law.

639. Duties — deputies. [Ch. 74, '90.] § 3. He shall personally perform all the duties assigned him by law and the rules of said court. Whenever he is unavoidably absent and unable to perform his duties, his deputies may perform all the duties of said office.

640. Fees. [Ch. 74, '90.] § 4. He shall receive such fees as were formerly allowed to the clerk of the supreme court of the territory of Dakota, or as may hereafter be fixed by the supreme court of this state, but shall receive no per diem.

641. Opinions. [Ch. 74, '90.] § 5. He must not allow any written opinion of the supreme court to be removed from his office except by the reporter, but shall permit anyone to examine or copy the same, and shall when required make a copy and certify to the same, or any syllabus thereof, without charge.

642. Office. [Ch. 74, '90.] § 6. He shall keep his office at the seat of government, and shall keep a complete record of all proceedings of the supreme court.

SUPREME COURT MARSHAL.

643. Appointment. [Ch. 8, '90.] § 1. The judges of the supreme court of the state of South Dakota are hereby authorized and required to appoint a suitable person as marshal at said court, who shall hold his office during the pleasure of such judges.

644. Duties. [Ch. 8, '90.] § 2. The duties of such marshal of the supreme court shall be as prescribed by law, and the rules of said court, not inconsistent with law.

645. Compensation. [Ch. 8, '90.] § 3. The said marshal shall receive a compensation of four dollars per day for each day's attendance upon said court, while said court is actually in session, the same to be certified by the presiding judge of said court at the end of each session thereof.

646. Fees and mileage. [Ch. 8, '90.] § 4. For the services of any process, order or mandate of said court, which he may be required to

serve, the marshal shall be entitled to receive and collect the same mileage and fees as a sheriff is entitled to under the general laws of the state for similar service.

ARTICLE 2. JUDICIAL CIRCUITS.

647. Counties in first circuit. [Ch. 70, '99; ch. 51, '97.] § 1. That the first judicial circuit shall consist of the counties of Clay, Yankton, Turner, Bon Homme, Hutchinson, Charles Mix, Douglas, Gregory, Tripp and Meyer.

648. Second circuit. [Ch. 51, '97.] § 2. That the second judicial circuit shall consist of the counties of Lincoln, Minnehaha, McCook, Moody, Lake and Union.

649. Third circuit. The third judicial circuit consists of the counties of Brookings, Clark, Codington, Deuel, Hamlin and Kingsbury.

650. Fourth circuit. The fourth judicial circuit consists of the counties of Aurora, Brule, Buffalo, Davison, Hanson, Jerauld, Lyman, Miner and Sauborn.

651. Fifth circuit. The fifth judicial circuit consists of the counties of Beadle, Brown, Day, Grant, Marshall, Roberts and Spink.

652. Sixth circuit. The sixth judicial circuit consists of the counties of Campbell, Edmunds, Faulk, Hand, Hughes, Hyde, McPherson, Potter, Stanley and Sully.

653. Seventh circuit. The seventh judicial circuit consists of the counties of Custer, Fall River, Pennington, Jackson, Luganbeel, Nowlin, Shannon, Sterling, Washington, Washabaugh and Ziebach.

654. Eighth circuit. The eighth judicial circuit consists of the counties of Butte, Lawrence, Meade, Boreman, Chateau, Delano, Dewey, Ewing, Harding, Martin, Pyatt, Rinehart, and Schnasse.

Boundaries of third, fourth, fifth, sixth, seventh and eighth circuits are determined from session laws, constitution and from division of counties and are not contained in quoted section as are first and second circuits.

SUBDIVISIONS OF JUDICIAL CIRCUITS.

655. Venue. In the entitling of a cause and fixing the venue in actions or proceedings in any judicial subdivision, it shall not be necessary to name all the counties comprising the whole subdivision, but it shall be sufficient to name the county wherein the court is held. [C. L. 419.]

656. Judge may change venue. All actions or proceedings, civil or criminal, now pending in any of the subdivisions in this state which do not properly belong therein under the provisions of the code of civil

procedure and code of criminal procedure, by reason of the change in the subdivisions heretofore existing by law, the venue thereof may be changed by order of the court or the judge thereof, upon the demand of either party, which demand shall be served upon the opposite party or his attorney, if either can conveniently be found within the state, but if neither can conveniently be found within the state, then such change of venue may be made as herein provided upon filing such demand with the clerk of the court in which such action or proceeding is pending; *provided, however*, that if no such change of venue is made as in this section provided, then all such actions or proceedings shall remain and be tried or be disposed of according to law in the courts of the subdivision where they are now pending. [C. L. 420.]

657. Judges may create new subdivision. The judges of the circuit courts, respectively, have authority at any time, by an order to that effect, to create a new subdivision out of any subdivision or subdivisions composed of two or more counties, and to fix the place of holding courts therein, which place shall be a county seat, and from the time of making such order such counties wherein courts are so appointed shall cease to be a part of the subdivision or subdivisions as herein provided, and shall itself constitute a subdivision, and the circuit courts shall be therein held at the times provided in such order. [C. L. 421.]

658. Clerk and sheriff in more than one county. In subdivisions composed of two or more counties, the clerk of the circuit court of the county where the court is held shall have authority to issue, and the sheriff thereof shall have authority to execute, all proper writ and process in any county or other place embraced within such subdivision, the same as if such subdivision were composed of his county only. [C. L. 422.]

659. Expenses apportioned. For the purpose of paying the expenses of holding courts in those subdivisions composed of two or more counties, the county clerks of the organized counties therein shall annually as soon as the assessment roll is received, transmit to the clerk of the court of that county wherein the court is held, a statement of the aggregate amount of the assessment roll of their counties respectively, and at the close of each term of the circuit court the clerk thereof shall, under the supervision of the judge, calculate the expenses of such term and the proportionate amount to be paid by each organized county according to the proportion which the amount of the assessment roll bears to the aggregate amount of all the assessment rolls in such subdivision, and shall certify to the boards of county commissioners of the respective counties, accounts for the proportionate amounts and in favor of the persons to whom such expenses shall be due, which accounts shall be

audited and allowed and warrants issued according in like manner as other claims against the county. [C. L. 423.]

660. Judge fix amount — when. If any county shall fail to furnish a statement of the amount of its assessment roll, or if no assessment shall be made therein, the judge of the circuit court may fix the proportionate amount of the expenses which each county shall pay, and may at any time by mandamus compel the assessment and levy of a tax, or the doing of any other act necessary to carry out the provisions of this act. [C. L. 424.]

661. Justice's jurisdiction. The civil and criminal jurisdiction of justices of the peace in organized counties in any judicial subdivision containing one or more unorganized counties, shall extend over all such unorganized county or counties in such subdivision; and all summons, warrants, orders or process issued by such justice of organized counties, shall be served or executed by the sheriff or any constable of the same county; and the costs in all criminal prosecutions in the circuit and justices' courts for offenses heretofore or hereafter charged to have been committed, when the same is not collected from the defendant, shall be audited and paid out of the state treasury; but no such costs shall be so audited or paid unless a duplicate itemized account of the same shall be certified to as correct by the state's attorney of the county, and examined and allowed by the circuit court, one of which accounts shall be preserved as a public record in the office of the clerk of the circuit court of the subdivision; and the court shall have full authority to disallow any or all such costs and fees whenever it deems the same illegally or unnecessarily incurred. And the expenses of all criminal prosecutions arising or having arisen in such unorganized counties, including the lawful costs of keeping the prisoners, shall be audited and paid out of the state treasury when the same is certified and allowed in the manner prescribed in this section. But no fees, costs or charges shall be certified or allowed unless the same are first duly adjusted; and no fees, costs or charges shall be so certified, allowed or audited as in this section provided, unless the officer prosecuting the same shall attach to such itemized account an affidavit that the same and every item thereof has been actually, legally and necessarily incurred, and that no part thereof has been paid. [C. L. 425.]

This section applies only to counties forming a part of the Indian reservation at the time it was enacted. *Morgan v. State*, S. D. ; 68 N. W. Rep. 538.

662. Court held at places other than county seat. [Ch. 62, '95.] § 1. When any county in this state does not own or can not procure suitable buildings at the county seat in which the term of circuit court for such county may be held, or when the county seat is located fifteen

miles or more from a railroad station in any county wherein more than one term of court is appointed to be held, one of the said terms may be held at any other place in said county located on any line of railroad therein, when suitable buildings and other conveniences may be had for the holding of court, provided such buildings and conveniences may be had without extra expense to such county.

662a. Duty of judge. [Ch. 62, '95.] § 2. The judge of the circuit court for the county wherein the conditions exist as specified in section one of this act, shall, upon a petition signed by at least one hundred electors of said county, issue an order directing that one of the terms of court of said county shall be held at some other place in said county having the qualifications mentioned in section one of this act, and such order shall be mandatory upon the county commissioners, clerk of courts, sheriff and all other officers of said county, and all the laws applying to their duty as now fixed by law for the providing for and the holding of terms of court shall apply with equal force and effect as though the term were held at the county seat.

662b. Duty of clerk. [Ch. 62, '95.] § 3. The clerk of the courts of the counties of this state are hereby authorized, upon the making of the order as provided for in section two of this act, to remove from the county seat all books and records of this (their) office to the place designated in such order, and to keep the same at such place during the time of holding such term of court.

663. When judge is interested or disqualified. [Ch. 79, '90.] § 1. It is hereby made the duty of the several circuit court judges of this state, when not otherwise officially engaged to hold terms of court in circuits other than those to which they have been elected, and to hear and determine at chambers any motion, application or special proceeding arising in such other circuit, upon the request of the judge of any circuit in which any cause, motion, application or special proceeding is at issue or pending in which the judge of such circuit is interested, disqualified, or from any cause whatever unable to act; also to hold such terms and to hear and determine all such matters at chambers in case of the temporary absence or removal of any judge from the circuit to which he may have been elected.

Circuit judge holding term of court in another circuit upon request may continue the term and conclude the causes he has been requested to try, or try unfinished business at the adjourned term of said court. *Williams v. Williams*, 6 S. D. 284; 61 N. W. Rep. 38.

TERMS OF CIRCUIT COURT.

664. Appointed terms. The judges of the circuit courts, respectively shall have power whenever thereunto requested by the board of commissioners of the county wherein terms of court are regularly holden, or

upon their own motion without request, by an order to that effect, to appoint and hold terms of the circuit court in any county or subdivision; and such judges shall have power to adjourn courts from time to time as they shall deem expedient for the due administration of justice; and such terms shall in all respects be considered the same as the general terms provided in this act. The courts herein appointed shall continue as long as the business therein shall require. The terms of the circuit courts for subdivisions composed of a single county only, shall be held at their respective county seats. [O. L. 426.]

665. First circuit. [Ch. 70, '99; ch. 51, '97.] § 3. The circuit court of the first judicial circuit shall annually hold terms of court in each of the counties comprising such circuit as follows: In Clay county, on the first Tuesday in April and second Tuesday in October; in Yankton county, on the second Tuesday in March and November; in Turner county, on the second Tuesday of February and September; in Bon Homme county, on the first Tuesday of May and December; in Hutchinson county, on the third Tuesday of May and the fourth Tuesday of October; in Douglas county, on the second Tuesday in May and fourth Tuesday in November; in Charles Mix county, on the first Tuesday in June and second Tuesday in January; and in Gregory county on the second Tuesday in June.

666. Second circuit. [Ch. 68, '99; ch. 51, '97.] § 1. That the circuit court of the second judicial circuit shall annually hold terms of court in each of the counties comprising said circuit as follows: Lincoln county, on the first Monday in February and the first Monday in September; Lake county, on the fourth Monday in February and the first Monday in October; Moody county, on the second Monday in March and the third Monday in October; Union county, on the fourth Monday in March and the third Monday in September; McCook county, on the second Monday in April and the second Monday in November; Minnehaha county, on the fourth Monday in April and the third Monday in November.

667. Third circuit. [Ch. 52, '97.] § 2. The circuit court of the third judicial circuit shall annually hold terms of court in each of the counties comprising such circuit as follows:—Deuel county on the third Tuesday in March, Hamlin county on the first Tuesday in February and second Tuesday in October, Brookings county on the third Tuesday in February and September, Codington county on the second Tuesday in May and November, Clark county on the first Tuesday in June and December, Kingsbury county on the third Tuesday in June and December.

668. Fourth circuit. [Ch. 61, '93.] § 1. The circuit court of the fourth judicial circuit shall annually hold terms of court in each of the counties comprising such circuit as follows: Sanborn county, on the first Tuesdays in May and October; Davison county, on the third Tuesday in May and the second Tuesday in November; Aurora county, on

the first Tuesdays in March and September; Brule county, on the first Tuesday in December and the second Tuesday in June; Buffalo county, on the first Tuesday in June; Jerauld county, on the second Tuesday in October; Hanson county, on the third Tuesday in February and the third Tuesday in September; Miner county, on the second Tuesday in May and the third Tuesday in October.

669. Fifth circuit. [Ch. 69, '99; ch. 52, '97.] § 3. The circuit court of the fifth judicial circuit shall annually hold terms of court in each of the counties comprising such circuit as follows: Beadle county on the second Tuesday in March and the second Tuesday in September, Spink county on the first Tuesday in May and the first Tuesday in November, Brown county on the fourth Tuesday in May and the first Tuesday in December, Marshall county on the first Tuesday in January and the third Tuesday in June, Day county on the fourth Tuesday in January and the second Tuesday in July, Grant county on the second Tuesday in April and the third Tuesday in November, Roberts county on the third Tuesday in February and the first Tuesday in October.

670. Sixth circuit. [Ch. 71, '99; ch. 61, '95; ch. 76, '90.] § 6. The circuit court of the sixth judicial circuit shall, in each year, hold terms of court in each of the counties comprising such circuit, as follows: Hughes county, on the second Tuesdays in May and November; Hyde county, on the first Tuesday in December; Hand county, on the third Tuesdays in April and September; Sully county, on the first Tuesdays in March and September; Potter county, on the third Tuesday in October; Edmunds county, on the first Tuesday in June and second Tuesday in December; McPherson county, on the second Tuesday in June and third Tuesday in December; Walworth county, on the second Tuesday in October; Campbell county, on the first Tuesday in October; Faulk county, on the third Tuesday in June.

671. Sixth circuit. [Ch. 59, '95.] § 1. The circuit court of the sixth judicial circuit shall annually hold terms of court in Stanley county as follows: One term on the second Monday in July, and one term on the second Monday in January.

672. Seventh circuit. [Ch. 76, '90.] § 7. The circuit court of the seventh judicial circuit shall annually hold terms of court in each of the counties comprising such circuit as follows: Pennington county, on the first Tuesday in March and the first Tuesday in November; Fall

River county, on the second Tuesday in April and third Tuesday in November; Custer county, on the first Tuesdays in May and September.

673. Eighth circuit. [Ch. 60, '95.] § 8. The circuit court of the eighth judicial circuit shall hold terms of court in each of the counties comprising such circuit as follows: Lawrence county on the second Tuesday in February and September; Meade county on the second Tuesday in May and November; Butte county on the second Tuesday in June and October in the year eighteen hundred and ninety-five, and on the second Tuesday in March and October each and every year thereafter.

ARTICLE 3. STATE'S ATTORNEY.

674. Election, oath and bond. A state's attorney shall be elected in each county in this state organized for judicial purposes, at the general election in the year eighteen hundred and eighty-four, and biennially after the last mentioned election, who shall hold his office for the term of two years and until his successor shall be elected and qualified; and shall, before he enters upon the duties of his office, take and subscribe the oath of office prescribed by law, and shall execute a bond to his county in the penal sum of one thousand dollars, with two or more sureties, to be approved by the county clerk of such county, which bond shall be conditioned for the faithful performance of his duties as such state's attorney, and that he will pay over to the treasurer of his county, in the manner prescribed by law, all moneys, which come to his hands by virtue of his office, and shall deposit such oath and bond in the county clerk's office; *provided*, that no person shall be eligible to the office of state's attorney who is not duly admitted to practice as an attorney in some court of record in this state. [C. L. 427.]

675. Duties. It shall be the duty of the state's attorney of the several counties to appear in the circuit courts of their respective counties, and prosecute and defend on behalf of the state, or his county, all actions or proceedings, civil or criminal, in which the state or county is interested or a party; and whenever the venue is changed in any criminal case, or in any civil action or proceeding in which his county or the state is interested or a party, it shall be the duty of the state's attorney of the county where such indictment is found, or the county interested in such civil action or proceeding, to appear and prosecute such indictment, and to prosecute or defend such civil action or proceeding in the county to which the same may be changed. [C. L. 428.]

676. Appear for state. Each state's attorney shall when requested by any magistrate of his county, appear on behalf of the state before any such magistrate, other than those exercising police jurisdiction of

incorporated cities and villages, and prosecute all complaints made in behalf of the state, except for common assault and battery, of which such magistrate shall have jurisdiction. [C. L. 429.]

677. Give counsel. The state's attorney shall, without fee, give opinions and advice to the board of county commissioners and other civil officers of their respective counties, when requested by such board or officers upon all matters in which the county is interested, or relating to the duties of such board or officers in which the state or county may have an interest. [C. L. 430.]

678. Salary. The state's attorneys shall severally receive such salaries for their services as the board of county commissioners of the proper county shall allow, not less than four hundred dollars a year, but the salary of such state's attorneys shall not be diminished during the term for which they shall be elected or appointed. The board of county commissioners, however, shall have the power to increase the salary of such state's attorneys, during the term of their office, whenever in their judgment the compensation fixed is inadequate for their services rendered or to be rendered, said increase to take effect at the time of the passage of the resolution authorizing such increase. All fees and costs received in civil actions in which the county is the successful party, shall be paid into the county treasury for the use and benefit of the county, and it shall not be competent or lawful for the board of county commissioners to give and pay said fees and costs, or either, or any part thereof to such state's attorney as a part of his salary or in addition to his salary. [C. L. 431.]

Fixing salary of district attorney lower than salary during preceding term after the officer has qualified for new term is a violation of the statute. *Polk v. Minnehaha County*, 5 S. D. 129; 37 N. W. Rep. 98.

678a. In counties with less than 700 voters. [Ch. 129, '99.] § 1. That the state's attorneys shall severally receive such salaries for their services as the board of county commissioners of the proper county shall allow, not less than one hundred dollars (\$100) a year. But the salary of such state's attorneys shall not be diminished during the term for which they shall be elected or appointed, but shall be fixed at the regular meeting of the board of county commissioners in October, 1900, for the term of two years commencing in January, 1901, and in a like manner each two years thereafter. Provided, that if the state's attorney of one county shall be requested to go to another county, or from one part to another part of his county, to transact any business as state's attorney, he shall be paid by his county the amount of his necessary expenses in transacting such business, in addition to the salary fixed by the county board.

§ 2. The provisions of this act shall apply only to counties that cast less than 700 votes for the office of governor at the general election held November 8, 1898.

679. Fees in certain cases. If a judicial subdivision is composed of more than one county, the state's attorney of the county where the

court is held for that judicial subdivision shall have authority to try all cases in which the county or state is a party, as provided by law, in the circuit court, and there shall be charged as a part of the expenses of all criminal prosecutions arising out of said county the following fees: For each trial in cases of misdemeanor, ten dollars; and for each trial in cases of felony, twenty-five dollars; and for each judgment upon a plea of guilty, or for costs, ten dollars; which fees shall be paid by the counties attached to said counties where the court is held, for judicial purposes. The above fees for all criminal offenses arising in such counties shall be included in the order of the court or judge as a charge on the said counties, together with the other charges against said counties as provided by law. [C. L. 432.]

680. Fees prohibited. Said state's attorneys shall not receive any fee or reward from or on behalf of any prosecutor or other individual, for services or in any prosecution or business to which it shall be his official duty to attend, nor be concerned as attorney or counsel for either party other than for the state or county in any civil action depending on some state of facts upon which any criminal prosecution commenced but undetermined, shall depend; nor shall any state's attorney while in office be eligible to or hold any judicial office whatever; but if the state's attorney of one county shall be requested to go to another county, or from one part to another part of his county to transact any business as state's attorney, he shall be paid by his county the amount of his necessary expenses in transacting such business in addition to the salary fixed by the county board. [C. L. 433.]

681. Court appoint, when. [Ch. 59, '89.] Each of the circuit courts, whenever there shall be no state's attorney for the county, or when the state's attorney shall be absent from the court or unable to attend to his duties, may if the court shall deem it necessary, appoint by an order to be entered in the minutes of the court, some suitable person, an attorney at law, to perform, for the time being, the duties required by law to be performed by the state's attorney, and the person so appointed shall thereupon be vested with all the powers of such state's attorney for that purpose, and the judge of the court shall fix by order duly entered in the minutes of the court, his fee therefor which amount shall be allowed by the board of the county commissioners, and which amount shall be deducted from the salary of the state's attorney; provided, however, that nothing herein contained shall be construed as giving to the court the power to permanently fill vacancies in such office as to interfere with the powers invested by law in the board of county commissioners, to fill vacancies occurring in county offices, but such board shall possess and exercise such power in case of state's attorneys. [C. L. 434.]

682. Disposal of fines. It shall be the duty of every state's attorney, whenever he shall receive any moneys for fines, recognizances, penalties or costs, to deliver to the officer or person paying the same, dupli-

cate receipts, one of which shall be filed by such officer or person in the office of the county treasurer. [C. L. 435.]

683. Statement to be filed. Every state's attorney shall, on or before the first day of January in each year, file in the office of the county treasurer an account in writing, verified by his affidavit, to be filed with said account, of all moneys received by him during the preceding year by virtue of his office, or any fines, recognizances, forfeitures, penalties or costs; and he shall specify in such account the name of each person from whom he may have received such moneys, the particular amount paid by each person and the cause for which each payment was made. But he shall pay over to the county treasurer all money he may receive as such state's attorney within ten days after he receives it. [C. L. 436.]

684. Penalty for neglect. Whenever such state's attorney shall refuse or neglect to account for or pay over the moneys so received by him as required by the foregoing section, he shall be liable to a fine of not less than fifty dollars nor more than two hundred dollars; but it shall be the duty of the county treasurer, in his official name and capacity, to cause an action to be instituted upon the bond of such state's attorney for the recovery of the moneys so received and unpaid by him. [C. L. 437.]

685. Attend grand jury. Whenever required by the grand jury it shall be the duty of the state's attorney of the county to attend them for the purpose of examining witnesses in their presence, or of giving them any advice in any legal matter, or to issue subpoenas and other process to enforce the attendance of witnesses. [C. L. 438.]

CLERK OF THE CIRCUIT AND COUNTY COURTS.

686. Must qualify. [Ch. 81, '90.] § 1. Every clerk of the circuit and county court, before entering on the duties of his office, shall execute a bond to the board of county commissioners of [the] county in which he resides, with two or more sureties, to be approved by said board, in the penal sum of two thousand dollars, conditioned for the faithful discharge of his official duties, and take and subscribe an oath or affirmation to support the constitution of the United States and of this state, and faithfully discharge the duties of his office, which oath and bond shall be filed and recorded in the office of the county clerk or county auditor.

687. Keep his office at the county seat. [Ch. 81, '90.] § 2. Every clerk shall keep his office at the county seat and shall perform all duties which are or may be required of him by law, and by the rules of the court of which he is clerk.

688. May appoint deputies. [Ch. 81, '90.] § 3. He may, at his discretion, appoint one or more deputies, for whose acts he shall be responsible; said deputy or deputies shall be appointed under the hand and official seal of the clerk; and the deputy or deputies appointed under and in pursuance of the provisions of this act may administer oaths, take acknowledgments of deeds and other instruments, and perform all the duties pertaining to the clerk of circuit and county courts.

689. Deputy must qualify. [Ch. 81, '90.] § 4. Before any deputy clerk of the circuit or county court shall enter upon the duties of his office he shall take and subscribe the oath mentioned in section one of this act, which oath, together with the appointment of such deputy clerk, shall be filed and recorded in the office of the county clerk or county auditor; such deputy shall be removed at the pleasure of the clerk.

690. Records. [Ch. 81, '90.] § 5. Every clerk shall procure, at the expense of his county, and keep the following books:

First — A register of actions, in which he shall enter the title of each action, list of each paper filed in the cause, and of all proceedings therein.

Second — A judgment book, in which shall be entered the judgment in each action.

Third — A docket, in which he shall enter alphabetically the name of each party to the judgment, the amount of the judgment, and the precise time of the docketing of such judgment.

Fourth — Such other books as may be necessary for the discharge of the duties of his office.

691. Responsible on bond for neglect. Any person who may, at any time, be injured or aggrieved by reason of the violation of the duties of his office, on the part of any such clerk of the circuit court, or by any wilful neglect or refusal to perform any of the duties pertaining to the office of clerk of the circuit court, as the same are or may be prescribed by law, may institute legal proceedings upon the bond of such clerk, and collect thereon double the amount of damages actually sustained by such aggrieved person, which suit may be brought before any court having competent jurisdiction; and the county treasurer is also authorized and required for every such violation or neglect of duty, to collect a fine of not less than fifty dollars for any such violation of duty, or refusal or neglect on the part of said clerk of the circuit court. [C. L. 440.]

692. Duties. It shall be the duty of the clerk of the circuit court to perform all duties which are or may be assigned him by law, and the rules of the court of which he is clerk, made in pursuance of the statute in such case provided. In the absence of the clerk of the circuit court from his office, or from the court, the deputy, appointed in pursuance of law, may perform all the duties pertaining to the office. [C. L. 441.]

693. May adjourn court when. The clerk of any circuit court, whenever the judge whose duty it may be to preside therein is hindered or delayed from any cause from being at the place of holding the same on the first, second or third day of the term thereof, is hereby authorized to adjourn said court from day to day, until the fourth day of said term; then if said judge does not appear and take his seat to preside therein, and the clerk does not receive a written order of adjourn-

ment, the clerk aforesaid shall adjourn said court without day, but the justice may, by written order to the clerk, have an adjournment of any term of court within the four days as aforesaid, to such other time as he may therein appoint; and such adjourned term shall be considered as a regular term for all lawful purposes whatever. [C. L. 442.]

694. Fees. [Ch. 81, '90.] § 6. The clerks of the circuit and county courts shall be entitled to the following fees and no more, viz.:

For filing each paper, ten cents.

For administering oaths, each person ten cents.

For making copies of any record or paper, per folio ten cents.

For docketing judgments, fifty cents.

For satisfying judgments or liens, twenty-five cents.

For transcript of judgment, one dollar.

For filing and entering mechanic's lien, fifty cents.

For issuing any process, commission or writ, one dollar.

For every certificate, twenty-five cents.

For taxing costs in each action, fifty cents.

For indexing and registering actions, fifty cents.

For approving bond, fifty cents.

For drawing juries, each two dollars.

For issuing subpoena, twenty-five cents.

For entering declaration to become a citizen of the United States, fifty cents.

For certificate of declaration to become a citizen of the United States, fifty cents.

For entering the final admission of alien to the rights of citizenship, one dollar.

For certificate of final citizenship, one dollar.

For certificate of admission of attorney, two dollars.

For certifying abstracts as to judgments and liens for each grantee, fifteen cents.

For entering case on calendar, twenty-five cents.

For entering continuance, twenty-five cents.

For making a judgment roll, fifty cents.

For certifying, folioing and paging records on appeal or change of forum, two dollars.

For all fees in default cases in civil actions, two dollars and fifty cents.

In all foreclosure proceedings and other equitable actions where no answer is made the fees of the clerk shall be five dollars, and no more.

For filing petition for appointment of administrator, executor and guardian, or for the revocation of the same, ten cents.

For reducing to writing the testimony of witnesses in cases required by law, ten cents for every one hundred words.

Certificate of probate attached to will, twenty-five cents.

Recording will and certificate of probate, ten cents for every one hundred words.

Recording letters testamentary and of administration, ten cents for every one hundred words.

Administering an oath to an executor, administrator, or other person, in cases provided by law, ten cents.

For each citation, summons, or other process, twenty-five cents.

Entering order confirming sale, ten cents for every one hundred words.

Entering the account of an executor or administrator, ten cents for each folio.

Entering each oath of an executor or administrator, ten cents for each folio.

Searching the records or files of his office, for each year twenty-five cents.

Recording any matter required to be recorded not otherwise herein provided for, ten cents for each folio; and when any will or other matter is recorded in any other than the English language, for each folio twenty cents.

For a translation of any will from any other language, for each folio twenty-five cents.

Copies and exemplifications of the probate of any will, of letters testamentary or of administration, or of any other proceeding or order from the office of the clerk of the county court, or any other papers filed or recorded in his office, transmitted on appeal or furnished on the request of any person, for each folio, ten cents.

695. Records open for inspection. [Ch. 81, '90.] § 7. All books in the office of the clerk of the circuit and county courts containing the docket or minutes of the judgment or decree thereof shall, during office hours, be open to the inspection of any person desiring to examine the same without any fees or charge therefor.

696. Commission. [Ch. 81, '90.] § 8. For receiving, keeping and paying out money in pursuance of any statute or order of court, one per cent on the amount so received, kept and paid out.

697. Attendance upon circuit court. [Ch. 81, '90.] § 9. The clerk of the circuit court shall receive for his attendance on the court while actually in session, five dollars a day.

698. Attendance upon the county court. [Ch. 81, '90.] § 10. The clerk of the county court shall receive for his attendance on the court while actually in session in the trial of civil actions three dollars a day;

provided, however, he shall not receive any per diem for attendance in the trial of probate cases. Provided, further, that the clerks of the circuit and county court shall keep a book in which he shall enter all fees and per diem salary received by him, and on the first day of January of each year, he shall make a report to the board of county commissioners of the county in which he resides, giving a full and itemized statement of all fees and per diem received by him during the preceding year, which report shall be sworn to by such clerk of the circuit and county court, and shall pay over to such board of county commissioners all the money received by him as fees and per diem as such clerk of the circuit and county court in excess of fifteen hundred dollars, if the population of such county is ten thousand or under ten thousand, and in all counties where the population is over ten thousand such clerks of the circuit and county court shall pay over to the board of county commissioners of such county all moneys received by him in fees and per diem as such clerk in excess of two thousand dollars; that the population of each county in this state, for the purpose of this act, shall be estimated by multiplying the last vote for governor of this state by five, and the product thereof shall be deemed the population of such county. That the board of county commissioners of any county can pay out any money returned to them from the clerks of the circuit and county court for the payment of any necessary clerk hire.

That part of section 10 of chapter 81, Laws of 1890, which refer to salary of clerk of courts, is not in conflict with section 34, article 5, nor section 6, article 9 of Constitution. *Minnehaha County v. Thorne*, 6 S. D. 449; 61 N. W. Rep. 688.

ARTICLE 5. JURORS.

699. Qualifications. All male citizens residing in any of the counties of this state, having the qualifications of electors, and being over the age of twenty-one years, and of sound mind and discretion, and not judges of the supreme court or circuit courts, clerks of the supreme or circuit courts, sheriffs, coroners, licensed attorneys, engaged in practice, or jailers, and not subject to any bodily infirmity amounting to a disability, and who have not been convicted of a criminal offense punishable by imprisonment in the penitentiary, and not subject to disability for the commission of any offense which by special provision of law does or shall disqualify them, are and shall be competent persons to serve on all grand and petit juries within their counties or subdivisions respectively; provided, that persons over sixty years of age, ministers of the gospel, probate judges, county commissioners, registers of deeds, practicing physicians, postmasters and carriers of the United States mail, shall not be compelled to serve as jurors; and provided further, that all members in good standing of any regularly

organized fire company shall be excused from serving as jurors in the courts of this state. [C. L. 443.]

700. Who may be exempt from service. [Ch. 87, '90.] § 1. That all persons, residents of this state, who shall serve a period of seven years as members of a regularly incorporated and acting fire company, shall upon the completion of such services, be thereafter permanently exempt from military and jury duty in this state, except in time of rebellion, insurrection or invasion.

701. Summoned by order of court. No jury shall be summoned except by order of the judge of the circuit court, who shall issue an order to the clerk of said court that a jury shall be summoned, and in such order shall specify the number of petit jurors that shall be summoned, and the time and place where they shall appear; and such order may be issued at any time within thirty days before the first day of the term of the circuit court, or at any time during the term of said court. [C. L. 444.]

702. Grand jury summoned. [Ch. 73, '91.] A grand jury shall be summoned in the same manner provided for summoning petit juries; provided, that in all cases a grand jury shall consist of not less than six nor more than eight jurors. [C. L. 445.]

703. Jurors must appear. Each grand and petit juror summoned shall appear before the court on the day and at the hour specified in the summons, and shall not depart without leave of court. [C. L. 445a.]

704. May be ordered forthwith. If all persons summoned as grand and petit jurors do not appear before the court, or if for any cause the panel of the grand jurors or petit jurors is not complete, or if no jury be drawn as above provided, the court may order the sheriff, deputy sheriff or coroner, to summon without delay, good and lawful men, having the qualifications of jurors; and the person or persons summoned shall forthwith appear before the court, and if competent shall serve on the grand jury or petit jury, as the case may be, unless such person or persons may be excused from serving or lawfully challenged. [C. L. 445b.]

705. To complete special panel. Whenever the panel of petit jurors shall be exhausted by the challenges of either party in any action, the judge of the court shall order the sheriff, deputy sheriff or coroner to summon, without delay, a sufficient number of persons possessing the qualifications of jurors, as before provided, to complete the number requisite for a jury in that particular case. [C. L. 445c.]

706. Selected in rotation. It shall be the duty of the county commissioners, in selecting and furnishing to the clerk the number of persons qualified to serve as grand and petit jurors, so to select and arrange that no one person shall come on the jury a second time before all qualified persons shall have served respectively in rotation, according to the best information that can be obtained. [C. L. 445d.]

707. Penalty for failure to appear. If any person summoned to appear as grand juror or petit juror fails, refuses or neglects to appear, such person shall be considered guilty of contempt of the court, and may be fined by the court in any sum not less than five nor more than fifty dollars; and if any person, when a second order of attachment is issued, neglects or refuses to appear, such person may be fined as above provided and imprisoned by the court not longer than ten days in the county jail; and if the county commissioners of any county willfully neglect or fail to select and furnish to the clerk names of persons as hereinbefore provided, such persons so offending may be fined by the court not less than five nor more than fifty dollars; and if the clerk of the circuit court, or deputy clerk, or sheriff, deputy sheriff or coroner, so neglect or fail to perform the duties imposed by this act, the persons so offending shall be considered guilty of contempt of court, and may be fined by the court not less than five nor more than fifty dollars, and if guilty of gross misconduct in office and contempt in disregarding the provisions of this act, may be imprisoned by the court not longer than thirty days, in the county jail. [C. L. 445e.]

708. Counties without township organization. [Ch. 75, '99.] In each of the counties not organized into civil townships wherein a district court is appointed or directed to be holden, two hundred names of qualified persons shall be selected from the last annual tax list, and furnished to the clerks of the district courts by the county commissioners, from which to draw the grand and petit jurors, and such number shall at all times be kept full by completing the number after each term of court when a jury of jurors have been drawn and summoned; and at the end of each term of the district court the clerk thereof shall make requisition upon the county commissioners for the furnishing of so many names as have been drawn, so as to keep the said number of two hundred full; and such county commissioners shall, at their first meeting after receiving such requisition furnish such number of names, so selected, of persons so qualified, to complete and keep full such number of two hundred: *Provided*, that if [in] any such county not organized into civil townships the number of two hundred names of qualified persons can not be selected from the last tax list as before stated, then one hundred names of qualified persons shall be selected and deemed a full and complete number from which to draw grand and petit jurors as aforesaid; *Provided further*, that upon discovery by the court or county commissioners of the name of any person who is a nonresident or disqualified, they shall withdraw such name. [C. L. 446.]

709. Names put on tickets. The clerk or deputy clerk receiving the names from the county commissioners as herein [above] provided, shall write the name of each person selected on a separate ticket and place the whole number of tickets in a box or other suitable and safe receptacle, and shall preserve the list of names furnished by the commissioners in the files of his office. [C. L. 447.]

710. Jurors drawn by lot. The clerk of the circuit court or his deputy, and the sheriff or his deputy, or if there be no sheriff, or in case of his disability or suspension from office, the coroner, shall immediately upon or within two days from the receipt of the order directing a jury to be summoned, meet together and draw by lot out of the box or receptacle wherein shall be kept the tickets aforesaid, the number of jurors directed to be summoned by the judge of the circuit court. The jurors first drawn, to the number required in the order, shall serve as grand jurors, if a grand jury shall be ordered to be summoned, and the remainder drawn in compliance with said order shall serve as petit jurors. [C. L. 448.]

711. Clerk to issue venires. The clerk shall, on the day of the drawing as herein provided, issue a venire or venires, as the case may be, directed to the proper officer of the counties respectively from which the jurors are drawn, commanding such officer to summon the persons whose names are drawn to appear before the circuit court at the hour, day and place designated in the order of the judge. A separate venire shall issue for the grand jury when such jury shall be ordered. [C. L. 449.]

712. Service of venire. The officer receiving such venire shall forthwith serve the same by reading or delivering a true copy thereof to each person therein named, or by leaving such a copy at his usual place of residence (such copy need contain only the name of the juror served), and shall make return thereof, with his proceedings indorsed thereon, to the clerk as soon as he has executed the same. [C. L. 450.]

IN COUNTIES WITH TOWNSHIP ORGANIZATION.

713. Procedure for drawing juries. In every county in this state, either wholly or partially organized into civil townships, wherein a circuit court is appointed or directed to be holden, the names of two hundred persons who are qualified to act as jurors shall be selected in the manner hereinafter provided, from which to draw the grand and petit jurors. The board of county commissioners in each county in which only a portion of the civil townships are or may be organized, shall apportion to each of the organized townships, and to each incorporated city or town in such county, and to the unorganized portion of such

county, as near as may be, its pro rata share of the said number of names. The number of names to be selected from those of the qualified residents of the portion or portions of such county not organized into civil townships and not embraced within the limits of any incorporated city or town, shall be furnished by the county commissioners in the manner now provided by law for counties having no organized townships. In each county in which the entire number of townships are organized into civil townships, the board of county commissioners shall, as near as may be, apportion pro rata the said two hundred names among the several townships in their respective counties; provided, that in counties containing an incorporated city or town, or incorporated cities or towns, the county commissioners shall apportion, as near as may be, to each incorporated city or town, its pro rata share of said number of names. The basis of any apportionment provided for in this section, shall be the proper names on the several assessors' lists for the year preceding the making or filing of such list of names for jurors. [C. L. 451.]

714. Township clerk to post notices. [Ch. 112, '93.] Whenever the county commissioners of any such county shall have determined the number of such names for each of the organized civil townships and for each incorporated city or town, if any there be in such county, the county clerk shall forthwith notify the clerk of each of such townships, cities, and towns, of the apportionment of his township, city or town and said clerk shall immediately thereafter cause to be posted in three public places in his township, city or town, a notice that the board of supervisors of the township, or board of aldermen or city council of the city, or the board of trustees of the town as the case may be, will at their next regular meeting, draw the names of the qualified jurors of the township, city or town to make up the grand and petit jurors list of the county; such notice shall state the place and hour of such meeting, within the township, city or town and designate the day, which shall be the day of the regular meeting of such board, or council, next after the posting of such notice. [C. L. 452.]

715. Who to select jurors, and how. Upon the day mentioned in section four hundred and fifty-two, the board of supervisors of the township, the board of aldermen or the city council of the city, or the board of trustees of the town, shall meet at the time and place mentioned in such notice, and select from the names of the resident tax payers of such township, city or town, three times as many names as are apportioned to the township, city or town by the county commissioners; and the township, city or town clerk shall at such meeting write

each name so selected upon a separate ticket, and shall also record a list of said names so written and selected in a book to be kept for that purpose. The said board shall then compare the names on said tickets with such recorded list of names, to see that said tickets are correct. The tickets shall then be folded, placed in a box or some other receptacle, and shaken up; one member of the board shall then select by lot, from the tickets in said box or receptacle, the proper number of names so apportioned to his township, city or town, as the case may be; and the clerk shall then record, in a book to be kept for that purpose, such names in the order in which they are drawn. [C. L. 453.]

716. Clerk furnish list to clerk of court. The said clerk shall immediately thereafter forward by mail to the clerk of the circuit court of his county a list of the names so drawn; and such clerk of the court shall make out and record, in a book to be used for that purpose, a list of the names returned to him under the provisions of this act; but the failure of the officers of any township, city or town to perform their duty, as hereinbefore provided, shall not invalidate said list made up by the clerk of the circuit court. [C. L. 454.]

717. Formation county board to select jurors. Within two days from the receipt of the order of the judge of the circuit court, directing a jury to be summoned, the clerk of the circuit court, or his deputy in case such clerk of the court does not act, and the county clerk, county treasurer and sheriff, or a majority of them, shall meet together at the county seat. In case the sheriff shall be disqualified by reason of being a party to any suit pending in said circuit court, or suspension from office, the coroner shall serve with said officers in place of the sheriff. The meeting of said officers shall be after notice in writing has been served the same day upon them, or their deputies, or by leaving a copy of said notice in their respective offices in case any such officer or deputy is absent from the county seat. Said notice must be served by the said clerk of the court, and must state therein the object to be to draw names for jurors of the next term of the circuit court, and the place and time of such meeting. [C. L. 455.]

718. Manner of drawing jurors. At such meeting the clerk of the circuit court or his deputy shall write the name of each person on said juror list on a separate ticket, and the remainder of the officers at such meeting shall compare such tickets with said list, and when all of said names on said tickets are found to correspond with said list, the said tickets shall then be folded and placed in a box or some suitable receptacle and shaken. [C. L. 456.]

719. Manner of drawing jurors. One of said county officers other than the clerk of the circuit court or his deputy, shall then proceed

to draw enough of said tickets to equal the number of jurors directed to be summoned by the judge of the circuit court, and the clerk of the court or his deputy shall record such names in the order in which they are drawn, in a book to be kept for that purpose. The jurors first drawn to the number required in the order shall serve as grand jurors, if a grand jury shall be ordered to be summoned, and the remainder drawn in compliance with said order shall be liable to serve as petit jurors. [C. L. 457.]

720. Duty clerk of court. The clerk of the court shall on the day of the drawing as last herein provided, issue a venire or venires, as the case may be, directed to the proper officer of the county, commanding such officer to summon the persons whose names are drawn to appear before the circuit court at the hour, day and place designated in the order of the judge. A separate venire shall issue for the grand jury when such jury shall be ordered. [C. L. 458.]

721. Number of names required to be kept. Such number of two hundred names shall at all times be kept full by completing the number after each term of court when a jury or juries have been drawn and summoned; and at the end of each term of the circuit court the clerk thereof shall make requisition upon the county commissioners for the furnishing of so many names as have been drawn so as to keep said number of two hundred full. And at the subsequent meeting the said board of commissioners shall proceed to apportion as hereinbefore provided for making up the whole of said list, and the same proceedings shall take place as to such names so required as are herein directed to be taken in making said full list, except that the board of supervisors of any township, the board of aldermen or the city council of any city, or the board of trustees of any town, need not be specially called to draw any such names, but may do so at any regularly called meeting, provided that in the notice of such meeting the fact that names for a jury list are to be drawn shall be stated therein as heretofore provided. [C. L. 459.]

722. Jurors in subdivisions of more than one county. To enable juries to be drawn and summoned in those subdivisions composed of two or more counties, the county clerks of all the organized counties therein shall, as soon as the assessment roll is returned, and yearly thereafter, furnish to the clerk of the circuit court of that subdivision the aggregate number of names appearing upon the assessment roll of their counties respectively, if such county shall have such assessment roll; and the clerk of such circuit court shall thereupon and yearly thereafter, make requisition upon the county commissioners for the proportionate number of names to be furnished by each county of the subdivision respectively, to make up the number of two hundred, each

county to furnish such proportion as the number of names upon its assessment roll bears to the aggregate of all the assessment rolls of the counties of such subdivision; and thereupon, from time to time as such requisition shall be made, the county commissioners shall furnish the required number of names, and from the two hundred names so furnished the grand and petit juries shall be drawn by such circuit court clerk and sheriff of the county where the court is held, by lot as therein provided. [C. L. 460.]

723. In case of failure of county to furnish names. If one or more counties shall fail to furnish their proportionate or any number of names, such juries shall be drawn from those names that shall be furnished, and the judges of the circuit court respectively are authorized and empowered to make any rule or order that shall be by them deemed necessary, or to cause any act or thing to be done to effect the drawing or summoning of either a grand or petit jury from such subdivision, and shall at any time have the power to cause a jury, either grand or petit, to be summoned for such circuit court from the body of such subdivision, and no omission of any act together, or the failure to perform it within the time herein prescribed, shall be cause of challenge of any individual juror or to the panel. [C. L. 401.]

ARTICLE 6. ATTORNEYS AND COUNSELORS-AT-LAW.

724. Must obtain license from supreme court. [Ch. 21, '93.] § 1. No person shall be permitted to practice as an attorney and counselor-at-law, in any court of record within this state, either by using or subscribing his own name, or the name of any other person, without having previously obtained a license for that purpose from the supreme court of this state, which license shall constitute the person receiving the same an attorney and counselor-at-law, and shall authorize him to practice in all the courts of this state, for and during his good behavior and to demand and receive fees and pay for any services he may render as an attorney and counselor-at-law in this state, and no person shall be refused a license under this act upon account of sex.

725. Must pass examination. [Ch. 21, '93.] § 2. No person shall be entitled to receive such license until he shall have obtained a certificate of good moral character from a court of record of this state, and shall have passed a satisfactory examination before the supreme court of this state, under such rules and regulations as the court shall provide; provided, that all persons, who by the laws heretofore or now in force, are permitted to practice as attorneys and counselors-at-law, may continue to practice as such.

726. Must be admitted upon certificate. [Ch. 21, '93.] § 3. No person who is under the age of twenty-one years, or who is not a resident of this state, shall be licensed under the provisions of this act; and any person producing a license or other satisfactory certificate from the supreme court of any state or of the United States, that he has been regularly admitted to practice as an attorney and counselor-at-law and a certificate of good moral character, as provided in section two may be licensed by the supreme court to practice as an attorney and counselor-at-law in all courts of this state without examination.

727. Any person shall have right to prosecute and defend, when. [Ch. 21, '93.] § 4. All persons shall have the right to prosecute or defend any and all actions or proceedings in any court in their own persons, to which they are a party, or in which they are beneficially interested.

728. Attorneys residing without the state, how admitted. [Ch. 21, '93.] § 5. When any attorney or counselor-at-law, residing in any other state or territory, who is regularly admitted therein, may desire to practice law in this state, such attorney or counselor may be allowed to practice in the several courts of this state upon the same terms and in the same manner that attorneys and counselors residing in this state are permitted to practice law in such state or territory.

729. Oath of attorney. [Ch. 21, '93.] § 6. Every person hereafter admitted to practice law in this state, shall, before his name is entered upon the roll hereinafter provided to be kept, take and subscribe an oath substantially in the following form: "I do solemnly swear that I will support the constitution of the United States and the constitution of the state of South Dakota, and that I will do no falsehood, or consent that any be done in court, and if I know of any that I will give knowledge thereof to the judge of the court, or some of them, that it may be reformed; I will not wittingly, wilfully or knowingly promote, sue or procure to be sued any false or unlawful suit, or give aid or consent to the same; I will delay no man for lucre or malice, but will act in the office of attorney and counselor according to my best learning and discretion, with all good fidelity, as well to the court as to my client, so help me God."

730. Clerk of supreme court to keep record. [Ch. 21, '93.] § 7. The clerk of the supreme court shall keep a roll or record, stating at the head thereof that the persons whose names are therein written have been duly admitted to practice as attorneys and counselors-at-law within this state, and that they have taken the oath of office as required by law.

731. Power of supreme court. [Ch. 49, '99; ch. 21, '93.] § 8. The supreme court shall have sole power to strike the name of any attorney or counselor from said roll, and to revoke his license or to suspend him from the practice for such time as shall seem just, for cause shown.

732. Attorney to show cause. [Ch. 49, '99; ch. 21, '93.] § 9. When an affidavit charging an attorney with embezzlement, or other professional misconduct, is filed in the supreme court, it shall order such attorney to show cause why he should not be suspended or disbarred from practice, and on the return of such order, the hearing of all matters pertaining thereto shall be referred to a committee of three reputable attorneys and counselors of the supreme court, and judgment shall be rendered on its report.

733. Penalty. [Ch. 21, '93.] § 10. Any person practicing law in this state contrary to the provisions of this act shall be liable to such punishment as is provided by law.

734. Duty of attorney. It is the duty of an attorney and counselor:

1. To maintain the respect due to the courts of justice and judicial officers.
2. To counsel or maintain no other actions, proceedings or defenses than those which appear to him legal and just, except the defense of a person charged with a public offense.
3. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law.
4. To maintain inviolate the confidence, and, at any peril to himself, to preserve the secret of his client.
5. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.
6. Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest.
7. Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed. [C. L. 465.]

735. Punishment for deceit. An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge or party to an action or proceeding, is liable to be dis-

barred and shall forfeit to the injured party treble damages, to be recovered in a civil action. [C. L. 466.]

736. Powers. An attorney and counselor has power:

1. To execute in the name of his client, a bond or other written instrument, necessary and proper for the prosecution of an action or proceeding about to be or already commenced; or for the prosecution or defense of any right growing out of an action, proceeding or final judgment rendered therein.

2. To bind his client to any agreement in respect to any proceeding within the scope of his proper duties and powers; but no evidence of any such agreement is receivable except the statement of the attorney himself, his written agreement signed and filed with the clerk, or an entry thereof upon the records of the court.

3. To receive money claimed by his client in an action or proceeding during the pendency thereof, or afterwards, unless he has been previously discharged by his client, and upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment. [C. L. 467.]

The act of an attorney within the scope of his authority, in the conduct of an action, is the act of his client. Direction of an attorney in claim and delivery indorsed upon the back of the affidavit, requiring the officer to take the property from the defendant, is a direction of the plaintiff. *Feury v. McCormick Harv. Mach. Co.*, 6 S. D. 397; 61 N. W. Rep. 162; *Fox v. Deering & Co.*, 7 S. D. 443; 64 N. W. Rep. 520.

It is presumed where the contrary does not appear that an attorney acting in a matter within the scope of professional duty has been employed and retained by a party whom he represents. *Nowes et al. v. Belding et al.*, 5 S. D. 603; 59 N. W. Rep. 1069.

In the absence of an express contract, a party who requests an attorney to appear and answer, becomes liable to pay reasonable compensation therefor. *Cranmer v. Building & Loan Ass'n of S. Dak.*, 6 S. D. 341; 61 N. W. Rep. 35.

Where attorney testifies as to the value of services, it is proper on cross-examination to establish anything which might affect the value of such services, or that by the negligence or carelessness of the witness the case was lost. *Id.*

Agent employed to sell on commission has no power to bind principal in contract for general employment of counsel. *Kirby v. Western Wheeled Scraper Co.*, S. D. ; 70 N. W. Rep. 1052.

737. Proof of authority. The court may, on motion, for either party and on the showing of reasonable grounds therefor, require the attorney for the adverse party, or for any one of the several adverse parties, to produce or prove by his oath or otherwise the authority under which he appears, and until he does so, may stay all proceedings by him on behalf of the parties for whom he assumes to appear. [C. L. 468.]

738. Cannot become surety. No practicing attorney and counselor shall be a surety in any suit or proceeding which may be instituted in any of the courts of this state. [C. L. 469.]

This section applies to all cases pending — not limited to those where attorney appears of counsel. *Towle v. Bradley*, 2 S. D. 472; 50 N. W. Rep. 1057.

The attorney cannot waive his right. The law incapacitates him from becoming surety. *Id.*

739. Attorney's lien. An attorney has a lien for a general balance of compensation in and for each case upon:

1. Any papers belonging to his client which have come into his hands in the course of his professional employment in the case for which the lien is claimed.

2. Money in his hands belonging to his client in the case.

3. Money due his client in the hands of the adverse party, or attorney of such party, in an action or proceeding in which the attorney claiming the lien was employed from the time of giving notice in writing to such adverse party, or attorney of such party, if the money is in the possession or under the control of such attorney, which notice shall state the amount claimed, and, in general terms, for what services.

4. After judgment in any court of record such notice may be given, and the lien made effective against the judgment debtor, by entering the same in the judgment docket opposite the entry of the judgment. [C. L. 470.]

Attorney in taking attorney's lien has option of entering same in judgment docket or giving notice in writing to adverse party. *Hroch v. Aultman & Taylor Co.*, 3 S. D. 477; 54 N. W. Rep. 269.

Attorney's lien is not affected by a subsequent assignment of judgment to one of defendant sureties on a bond, the subject of the action. *Leighton v. Severson et al.*, 8 S. D. 350; 66 N. W. Rep. 938.

Attorney by giving notice to judgment debtor of his claim of lien before application is made to set off judgments by such judgment debtor acquires a prior and superior lien to such right of set-off. *Hroch v. Aultman & Taylor Co.*, 3 S. D. 477; 54 N. W. Rep. 269; *Pirie v. Harkness*, 3 S. D. 179; 52 N. W. Rep. 581.

740. Lien released by bond. Any person interested may release such lien by executing a bond in a sum double the amount claimed, or in such sum as may be fixed by a judge, payable to the attorney, with security to be approved by the clerk of the court, conditioned to pay the amount finally due the attorney for his services, which amount may be ascertained by suit on the bond. Such lien will be released unless the attorney, within ten days after demand therefor, furnishes any party interested a full and complete bill of particulars of the services and amount claimed for each item or written contract with the party for whom the services were rendered. [C. L. 471.]

747. Refusal to pay over money. An attorney who receives the money or property of his client in the course of his professional business, and refuses to pay or deliver it in a reasonable time after demand, is guilty of a misdemeanor. [C. L. 478.]

748. No penalty unless lien secured. When the attorney claims to be entitled to a lien upon the money or property, he is not liable to the penalties of the preceding section until the person demanding the money or property proffers sufficient security for the payment of the amount of the attorney's claim when it is legally ascertained. [C. L. 479.]

749. No liability if security given. Nor is he in any case liable as aforesaid, provided he gives sufficient security that he will pay over the whole, or any portion thereof, to the claimant, when he is found entitled thereto. [C. L. 480.]

ARTICLE 7. STENOGRAPHERS.

750. Appointment. The judges of the circuit courts in each judicial circuit may appoint whenever in his judgment it will expedite public business and tend to the more economical administration of justice, a short-hand reporter who shall be well skilled in the art and competent to perform the duties required of him. [C. L. 481.]

Stenographer may be required to attend court by the appointing judge out of his own circuit. When so attending he is entitled to mileage prescribed by section 485, Comp. Laws. *Underwood v. Lawrence County*, 6 S. D. 5; 60 N. W. Rep. 147.

751. Duty. [Ch. 67, '93.] § 2. It shall be the duty of such reporter, under the direction of the court, to take down in short-hand the oral instructions of the judge, if any such oral instructions are given, the objections made and exceptions taken during the trial in all criminal cases, and in civil cases, when either of the parties or the judge direct, and also such other matter as the court shall order, and for each day actually and necessarily employed in the performance of such duties, he shall receive such sum as may be fixed by the judge, not exceeding ten dollars per day, to be audited and paid by the county or subdivision wherein such services shall be rendered upon the order of the judge; provided, such per diem shall not be allowed to the reporter except for days of a regular or adjourned term of the court, when the judge shall be present and presiding and engaged in the hearing or trial of a cause upon the calendar. [C. L. 482.] See § 6290.

Certificate of the judge as to attendance at so much per diem in the absence of a general liability of the county, does not create an obligation against the county, but the county being liable, fixes the amount to be paid. *Underwood v. Lawrence County*, 6 S. D. 5; 60 N. W. Rep. 147.

752. Transcript fees. [Ch. 87, '93.] § 1. The judge may, on the application of either party in a criminal case, direct such reporter to make out and file with the clerk of the court, a certified transcript of his shorthand notes, in longhand when the same is needed in such case, and he shall receive compensation therefor at the rate of ten cents per folio of one hundred words, to be audited and paid as provided in section four hundred and eighty-two of the compiled laws. [C. L. 483.]

753. Fees of reporter in civil cases — certified transcript prima facie evidence. [Ch. 87, '93.] § 2. Such reporter shall, on the request of either party in a civil or criminal case, make out and certify such transcript and deliver the same to the party desiring it, on payment of his fees at the rate of ten cents per folio, and such transcript when certified by the reporter to be a correct transcript of his notes of the evidence, proceedings and rulings shall be prima facie evidence of the testimony given and of the rulings and decisions of the court and of the proceedings had upon the trial; for each carbon copy of such transcriptive civil cases the reporter shall when such copy is requested receive five cents per page. [C. L. 484.]

Stenographer's notes not a part of the record, are made so only by being incorporated into the record, or bill of exceptions and authenticated. *Golden Terra Mining Co. v. Smith et al.*, 2 Dak. 377; 11 N. W. Rep. 97.

Evidence of a deceased or absent witness, taken upon a former trial of a case, may be read in evidence. *Merchants' N. Bank v. Stebbins*, S. D. ; 74 N. W. Rep. 199.

Minutes of the court do not include stenographer's notes or transcript. No law providing for filing of notes or transcript by stenographer, as a part of the record in the case, exists. *Distad v. Shankland*, S. D. ; 75 N. W. Rep. 205.

754. Attendance and mileage. Such reporter shall proceed from county to county, or subdivision, where the circuit courts are held, when required thereunto by such circuit judge, and be in attendance upon such circuit court to perform such duties as shall be required of him, and shall receive traveling expenses for each mile actually and necessarily traveled to and returning from such circuit court, to be paid by the county, five cents. [C. L. 485.]

755. Tenure and oath. Such reporters shall hold their offices until removed by the judges of the circuit court for which they are appointed, for misconduct, incapacity, or inattention to duty, and shall take and subscribe an oath to support the constitution of the United States and the constitution of the state of South Dakota, and to honestly, faithfully, and impartially perform the duties of their said office, which oath shall be filed with the clerk of the court in that county where the circuit court shall by law exercise the jurisdiction which pertains to district and circuit courts of the United States. [C. L. 486.]

ARTICLE 8. ADMINISTRATION OF OATHS.

756. Officers authorized to administer oaths. The following officers are authorized to administer oaths:

Each justice of the supreme court;

Clerks of the supreme and circuit courts and their deputies within their respective counties;

County clerks and their deputies, and county commissioners within their respective counties;

Judges of the circuit court, justices of the peace and notaries public within their respective counties;

Each sheriff and his deputies in cases where they are authorized by law to select commissioners or appraisers, or to impanel juries for the view or appraisal of property, or are directed as an official duty to have property appraised, or take the answers of garnishees. [C. L. 487.]

757. Affirmation. Persons conscientiously opposed to swearing may affirm, and shall be subject to the penalties of perjury as in case of swearing. [C. L. 488.]

ARTICLE 9. STATE COMMISSIONERS.

758. Appointment and powers. The governor shall have power to appoint one or more commissioners in any state of the United States, or of the states belonging to the United States, who shall continue in office during the pleasure of the governor, and shall have authority to take the acknowledgment and proof of the execution of any deed or other conveyance, or lease of any lands lying in this state, and of any contract, letter of attorney, or any other writing under seal or not, to be used or recorded in this state. [C. L. 489.]

759. Seal. Each commissioner so appointed as herein provided shall have an official seal, on which shall be engraved the words, "commissioner of state of South Dakota," with his surname at length, and at least the initials of his christian name; also the name of the state or territory in which he has been commissioned to act, which seal must be so engraved as to make a clear impression on wax or wafer. [C. L. 490.]

760. Acknowledgments valid. All acknowledgments and proofs as herein provided, taken according to the laws of this state, and certified to by such commissioner under his seal of office, and annexed to or indorsed on such instrument, shall have the same power and effect as if the same had been made before any officer authorized to perform such acts in this state. [C. L. 491.]

761. Administer oaths and take depositions. Every commissioner appointed as before mentioned shall have power to administer an oath which may be lawfully required in this state, to any person willing to take the same, and to take and duly certify all depositions to be used in any of the courts of this state, in conformity to the laws thereof, either on interrogatories proposed under a commission from any court of this state, or by consent of parties, or on legal notice given to the opposite party; and all such acts shall be as valid as if done and certified according to law by a proper officer in this state. [C. L. 492.]

762. Qualification — oath and seal. Every such commissioner, before performing any duty or exercising any power by virtue of his appointment, must take and subscribe an oath or affirmation before a judge or clerk of some court of record having a seal of the state or territory in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of the laws of the state of South Dakota, with a description and impression of his seal of office, to be filed in the office of the secretary of this state. [C. L. 493.]

ARTICLE 10. NOTARIES PUBLIC.

763. Appointment and powers. The governor shall appoint in each of the organized counties in this state, from among the eligible citizens thereof, one or more notaries public, who shall hold their office for four years, unless sooner removed by the governor, each of whom shall have power and authority anywhere in the state to administer oaths and perform all other duties required of them by law. [C. L. 494.]

764. Commission — duplicate posted — fees. [Ch. 104, '89.] The secretary shall issue a commission and duplicate thereof to each notary public appointed by the governor, one of which shall be by said notary public posted in a conspicuous place in his office for public inspection, and the secretary shall be entitled to charge and receive for the issuance of said commission and duplicate a fee of two (2) dollars. The secretary shall keep in his office a careful record of such appointments and the date of expiration and shall notify each notary by mailing, postage prepaid, at least thirty (30) days before the expiration of his term a notice of the date upon which his commission expires, which notice shall be addressed to said notary at his last known place of residence. [C. L. 495.]

765. Qualification, oath and bond. Each and every notary public, before he enters on the duties of his office, shall take an oath to support the constitution of the United States and the constitution of the

state of South Dakota, and to faithfully and impartially discharge the duties of his said office, and shall give bond to the people of the state, to be approved by the clerk of the circuit court of his county or judicial subdivision, with one or more sureties, in the penal sum of five hundred dollars, conditioned for the faithful discharge of the duties of his said office. [C. L. 496.]

766. In case of vacancy — records. Whenever the office of any notary public shall become vacant, the records of said notary public, together with all the papers relating to the office, shall be deposited in the office of the clerk of the circuit court in the county in which the said notary public resides; and any notary public who, on his resignation or removal from office, shall neglect to deposit such records and papers in the clerk's office, as aforesaid, for the space of three months, shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars; and if any executor or administrator of any deceased notary public shall neglect to lodge such records and papers as aforesaid, which come into his hands, in the clerk's office, for the space of three months after said records and papers shall come into his possession, he shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars; and if any person shall knowingly destroy, deface or conceal any records or papers of any notary public, he shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars, and shall be moreover liable to an action by the party injured. [C. L. 497.]

767. Protest of bills and notes. It shall be the duty of each and every notary public, when any bill of exchange, promissory note, or other written instrument, shall be by him protested for non-acceptance or non-payment, to give notice in writing thereof to the maker and each and every indorser of a bill of exchange, and to the maker or makers of and each and every security or indorser of any promissory note or other written instrument, immediately after such protest shall have been made. [C. L. 498.]

768. Service of notice. It shall be the duty of every notary public personally to serve notice upon the person or persons protested against, or by properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the United States mail or post office most conveniently accessible from the place where the protest was made, and prepaying the postage thereon. [C. L. 499.]

769. Compensation. The officer making such protest shall receive the sum of twenty-five cents and postage for each and every notice so made out and served. [C. L. 500.]

770. Record and copy as evidence. Each and every notary public shall keep a record of all such notices, and of the time and manner in which the same shall have been served, and of the names of all the parties to whom the same were directed, and the description and amount of the instrument protested; which record, or a copy thereof, certified by the notary under seal, shall at all times be competent evidence to prove such notice in any trial before any court in this state where proof of such notice may become requisite. [C. L. 501.]

771. Clerk of court keep records. It shall be the duty of the several clerks of the circuit courts to receive and keep safe all the records and papers directed by this article to be deposited in their office, and give attested copies of any of said records or papers when required; and copies so given by the said clerk are hereby declared to be as valid as if the same had been given by the said notaries public. All forfeitures under this act shall be, one-half to the use of this state, and the other half to him or them who shall sue for the same, to be recovered in a civil action in any court having jurisdiction of the same in the county where such notary public shall reside. [C. L. 502.]

772. Impressions of seal deposited with secretary of state. Every notary public, before he enters upon the duties of his office, shall provide an official seal and deposit an impression of the same, together with said oath and bond, in the office of the secretary of the state. [C. L. 503.]

773. File commission with clerk. Every notary public, before he enters upon the duties of his office, shall file his commission for record with the clerk of the state court of his county or subdivision, and shall deposit with such clerk an impression of his seal, together with his official signature; and the said clerk shall record the same in a book kept for that purpose; and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public during the time such commission is in force. [C. L. 504.]

774. Duty upon change of residence. Whenever such notary public shall change his place of residence from the county or subdivision in which he was first appointed, to another county or subdivision, it shall be his duty to comply with the requirements of section five hundred and four before he again enters upon the duties of his office. [C. L. 505.]

775. Revocation sent to clerk. Should the commission of any person so appointed be revoked, the secretary shall immediately notify such person, and the clerk of the circuit court of the proper county or subdivision, through the mail. [C. L. 506.]

776. Notarial acts receive full credit. Full faith and credit shall be given to all the protestations, attestations, and other instruments of publication, of all notaries public now in office or hereafter to be appointed under the provisions of this article. [C. L. 507.]

777. Penalty for exercising duties after expiration. Any notary public exercising the duties of his office after the expiration of his commission, or when otherwise disqualified, or appending his official signature to documents when the parties have not appeared before him, shall be guilty of a misdemeanor, and be subject to a fine of one hundred dollars for each offense, to be recovered before any court having competent jurisdiction, and shall also be removed from office by the governor. [C. L. 508.]

CHAPTER 9. COUNTIES AND COUNTY OFFICERS.

ARTICLE 1. BOUNDARIES OF COUNTIES.

(Omitted from this compilation.)

ARTICLE 2. ORGANIZATION OF COUNTIES.

778. Petition. Whenever the voters of any unorganized county in this state shall be equal to one hundred and fifty or upwards, and at least one hundred and fifty thereof shall desire to have said county organized, they may petition the governor, setting forth that they have the requisite number of legal voters to form a county organization, and request him to organize said county as hereinafter provided. [C. L. 510.]

779. Duty of governor. Whenever the voters of any unorganized county in this state shall petition the governor, as provided in the preceding section, and the said governor shall be satisfied that such county has one hundred and fifty legal voters, it shall be the duty of the governor, and he is hereby authorized to call an election in said unorganized county, and fix one or more places in said county as the polling places therein, and shall fix the time for holding said election; and the governor shall thereupon issue a notice of election, which notice shall be substantially in the following form, to wit:

Notice is hereby given that on theday of, 18....., at the following place (or places, as the case may be)....., in the county of....., an election will be held for the following officers of the said county of, in the said State of South Dakota, in the organization of said county: (name the officers to be elected), and also for the temporary location of the county seat of said county, which election will be open at the hour of eight o'clock in the morning, and will continue open until five o'clock in the afternoon of the same day.

Dated this.....day of....., 18....

Attest :
..... Governor.

Secretary. [C. L. 511.]

780. Election of officer. There shall be elected by the qualified electors of said unorganized county, all of the officers of said county as is or may be provided by law for organized counties, which officers shall hold their respective offices until the next general election thereafter, and until their successors are elected and qualified. [C. L. 512.]

781. County seat, how selected. The electors at such election are hereby empowered to vote for and select a county seat of such county temporarily, by ballot, subject to be changed thereafter as provided by law; and each voter at such election may designate on his ballot the place of his choice for county seat; and the place having the highest number of votes polled shall be the temporary county seat. [C. L. 513.]

782. Election precincts. Whenever the governor shall have made out and completed said notice of election, he shall cause the same to be delivered to the clerk of the district court of the judicial subdivision to which said unorganized county is attached for judicial purposes, in the county where the court is held for such judicial subdivision, at least fifty days prior to the time fixed for said election; and thereupon and at least forty days prior to the time fixed by the governor in said notice for such election, the said clerk of the circuit court shall take to his assistance the chairman of the board of county commissioners and register of deeds, who shall meet at the office of said clerk of the circuit court at the time fixed by him; and the said officers, or a majority of them, shall thereupon, if the governors shall fix more than one place for holding the election in said unorganized county, divide said county into election precincts in accordance with said notice, regard being had for the convenience of the voters, and the said clerk of the circuit court shall thereupon add at the foot of each certified copy of said notice of election, a further certificate signed by him, under the seal of the court, showing the division of the said county into election precincts and the boundaries thereof, as determined by said board; and the said clerk of circuit court of said county shall cause the said notice and certificate to be published for at least thirty days prior to said election, in one newspaper of general circulation in said judicial subdivision, printed and published in the county where the court for such subdivision is held, and to deliver to the sheriff or coroner of the county where such court is held, or other person designated by him, five certified copies of said notices and the certificate at the foot thereof, dividing the county into voting precincts, if any, which original notice shall be filed in the office of the clerk of said court as a record therein. [C. L. 514.]

783. Judges of election. It shall be the duty of the said clerk of circuit court, register of deeds, and chairman of the board of county com-

missioners, or a majority thereof, at the same meeting mentioned in the preceding section, to appoint three capable and discreet persons possessing the qualifications of electors in said unorganized county to act as judges of election at each polling place in said county, and thereupon said clerk of the district court shall make out and deliver to the sheriff, coroner, or other person that may be designated by them, after the appointment of said judges, a notice in writing thereof, directed to the judges of election so appointed, and it shall be the duty of the sheriff, coroner, or other person so appointed, as provided in this section, within ten days after receiving such notices, to serve the same upon each of the said judges of election. [C. L. 515.]

784. Posting notices. The sheriff, coroner or any other person to whom such notices of election shall be delivered as aforesaid shall put up in five of the most public places in each of the voting precincts in said unorganized county at least twenty days previous to the time of holding such election provided for in this act, one of each of the notices of election with the said certificate thereto, and one shall be posted at the house where said election is authorized to be held. [C. L. 516.]

785. Vacancies. If any person appointed to act as judge of election as aforesaid shall neglect or refuse to be sworn to act in such capacity, or shall not be present, the place of such person shall be filled by the vote of such qualified electors residing within the county or voting precinct as may then be present at the place of election, and the person or persons so elected to fill the vacancy or vacancies shall be and are hereby vested in that election with the same powers as if appointed judges of election as provided for in this act. Said judges of election shall choose two persons having the qualifications of electors like themselves to act as clerks of such election. [C. L. 517.]

786. Election law to apply. All the provisions of chapter fourteen of the political code of South Dakota, entitled "elections," and all amendments thereto, not inconsistent with the provisions of this act, shall apply to all elections held under the provisions of this act. [C. L. 518.]

787. Supervisors appointed. It shall be the duty of the governor at the time of calling said election, or at least thirty days prior to the time fixed for such election, to appoint a supervisor of election for each polling place in said unorganized county, who shall not be a resident of such county or in any manner interested in the vote therein, but shall possess all the qualifications of an officer of the state. Such supervisor shall before he enters upon the duties of his office take and subscribe the oath of office required by law, and also that he is not and will not in any

manner be directly or indirectly interested in the location of any county seat in said county, and will not be so interested therein, and is not the owner of any land or interest therein situated in said county, and shall file the same with the secretary of the state. [C. L. 519.]

788. Ballot-box and poll-books. It shall be the duty of the said supervisor of election to furnish at said election at the time and place fixed for such election a ballot-box in due form for use at said election, but if the supervisor of election should fail or neglect to so furnish said ballot-box at the time and place where such election is held, then any resident and legal voter at such poll shall have authority to furnish a ballot-box for use at said election; and the said supervisor shall at the same time and place furnish the proper and necessary poll-books for use at said election in the form provided by law, but if said supervisor of election should neglect or refuse to produce and furnish such poll-books at said election, then any qualified voter at said election is authorized to produce and furnish such poll-books and deliver the same to the judges of election. [C. L. 520.]

789. Supervisors — powers and duties. The supervisors of elections appointed under the provisions of this act are authorized and required to attend at all times at the places for holding said election for which he is appointed, for counting the votes cast at such election, to challenge any vote by any person whose legal qualifications the supervisor may doubt, to be and remain where the ballot-boxes are kept at all times after the polls are opened until every vote cast at such election has been counted and until the canvass of all votes is completed and the proper and requisite certificates or returns made by the judges and clerks of election, and to personally inspect and scrutinize from time to time and all times on the day of election the manner in which the voting is done and the way and methods in which the poll-books and tally sheets therein are kept; and to the end that each candidate voted for at such election, and each place voted for as county seat, shall have the benefit of every vote cast for him or for such place voted for as county seat, the supervisors of election are and each of them is required to personally scrutinize and assist in the counts and canvass of each ballot in the election precinct for which he was appointed as supervisor, and to make out and deliver to the clerk of said district court any statement of the truth or accuracy of the poll-books, and the truth or fairness of the election and canvass thereof, and whether in their opinion there was illegal voting at said election, and if so the extent of such illegal voting, and the nature and character thereof, if any, in order that the facts as they appear to such supervisors may become known, which report shall remain among the files of the clerk of the said circuit court. [C. L. 521.]

790. Privileges given. And to better enable the supervisors of election to discharge their duties, they are authorized and directed on the day of such election to take, occupy and remain in such position from time to time during such election, whether before or behind the ballot-boxes, as will in their judgment best enable them to see the person offering to vote, and as will best conduce to their scrutinizing the manner in which the voting is being done; and at the close of the polls for the reception of the votes they are required to place themselves in such position in relation to the ballot-boxes for the purpose of engaging in the work of assisting in the canvass of the ballots as will enable them to fully perform their duties in respect to such canvass provided for, and shall there remain until every duty in respect to such canvass, certificates and returns has been wholly completed. [C. L. 522.]

791. Penalty for illegal voting. And if any person shall interfere with the clerks, judges or supervisors of election in the exercise and discharge of their duties, or shall interfere, hinder, molest, or threaten to molest any of such officers in the discharge of their duties or shall cast any illegal vote at such election, they shall be deemed guilty of a felony, and shall upon conviction thereof be punished as provided in section five hundred and twenty-seven. [C. L. 523.]

792. Ballots to be numbered. The ballots at such election shall be folded by the voters and delivered to one of the judges of election, and if the judges and supervisors of election or a majority of them be satisfied the person offering the vote is a legal voter, the clerks of election shall enter the name of such voter and his number under the proper heading in the poll-books, and the supervisors of election and also the judges of election shall thereupon endorse on the back of the ticket offered the number corresponding with the number of the voter on the poll-book, and shall immediately put the ticket into the ballot-box. [C. L. 524.]

793. No adjournment or recess. After the opening of the polls no adjournment shall be had, nor shall any recess be taken until the votes cast at such election shall have been counted and the result publicly announced. All the ballots counted by the judges and supervisors of election shall after being read be strung upon a strong thread or twine, in the order in which they have been read, and after such ballots have been all counted and so strung, the thread shall be tied in a knot, which knot shall be covered by wax, as directed by the supervisors of election, and thereupon it shall carefully be enveloped and sealed up by the judges of election in presence of the supervisors, and immediately placed in the ballot-box, together with the said poll-books, which ballot-boxes shall be carefully locked up or fastened and sealed

by the judges of election in the presence of said supervisors before the same shall be delivered to them or either of them as provided in this act. [C. L. 525.]

794. Return of poll-books. The judges of election shall after the canvass of the votes has been closed as provided by law, thereupon enclose and seal one of the poll-books and under cover direct the same to the register of deeds of said county to which said unorganized county is attached for judicial purposes, and the book thus sealed shall thereupon be delivered to the supervisor of election, and shall that way be conveyed by such supervisor to and delivered to the register of deeds at his office within three days after the closing of the polls; and the other poll-book enclosed in the ballot-box as aforesaid, together with the ballots enclosed and sealed therein by such judges and supervisors, shall within the same time be deposited by said supervisors with the clerk of the circuit court for such judicial subdivision; and the said poll-book in the office of the register of deeds shall be subject to inspection at any time thereafter, and said poll-book shall be preserved as a public record, and the ballots and the ballot-boxes with the poll-book therein shall be carefully kept closed and sealed until they shall be ordered opened by the circuit court of said subdivision or the judge thereof. [C. L. 526.]

795. Penalty for misconduct by officers. If any of the supervisors, judges or clerks of election shall in any manner interfere with any of the ballots, ballot-boxes or poll-books, other than as is provided by this act and the laws of the state, or shall wilfully aid or assist in making any false count of the ballots, or wilfully falsify the poll-books in any manner, or wilfully make any false return of the votes, or if any supervisor of election shall wilfully refuse or neglect to deliver such poll-book and ballot-boxes to the officers provided for in this act within the time specified in this act, safe and with the seals unbroken, or if any supervisor shall in any manner interfere with such poll-books, ballots or ballot-boxes, other than to deliver them to the officers provided for in this act, he shall be deemed guilty of a felony, and upon conviction thereof shall be fined in a sum not exceeding five thousand dollars and be imprisoned in the state prison for not less than one year nor more than five years. [C. L. 527.]

796. Canvass of votes. The said register of deeds of the county to which such unorganized county is attached for judicial purposes shall, within the time prescribed by law for the canvass of votes, take to his assistance the said county judge, the said clerk of the circuit court, and a majority of the county commissioners of his said county, who shall proceed to open said returns and make an abstract of the votes cast at said election in the following manner: The abstract of the

votes for county officers shall be on one sheet, and the abstract of votes for the temporary location of the county seat shall be on a separate sheet; and it shall be the duty of said register of deeds immediately to make out a certificate of election to each of the persons having the highest number of votes for such county officers, and deliver such certificate to the persons so elected; and immediately after canvassing the returns and making an abstract of the votes as provided in this section, the register of deed shall make a certified copy of each abstract and forward the same to the secretary of the state; and when the votes are canvassed for county seat as provided in this section the place having the highest number of votes shall be the temporary county seat and such place shall be so declared the county seat by said board or a majority of them. [C. L. 528.]

797. Officers to qualify. The officers elected under the provisions of this act shall proceed to qualify in the manner provided by law for such officers within twenty days after the canvassing of such votes as provided for in the preceding section, and the county commissioners after they have so qualified shall immediately convene at the place so selected as the county seat of said unorganized county, as canvassed and declared by said canvassing board, and proceed to the discharge of their duties as said county commissioners in the organization of said county as is now or may be hereafter provided by law; and if any person elected to any office shall fail or refuse to qualify within thirty days after such canvass his office shall be deemed vacant and shall be filled in the manner provided by law for the filling of vacancies; and if any one or more of the county commissioners shall fail or refuse to qualify as provided by law, the remaining member or members of said board, with the judge of the county court and register of deeds of said county, even before the said two such officers named have given their bond, shall immediately appoint some suitable person to fill the vacancy in the office of county commissioner. [C. L. 529.]

798. Power of county commissioners. The county commissioners elected or appointed under the provisions of this act shall have power to divide the county into three commissioner districts, which shall be numbered from one to three; and said districts shall not be changed oftener than once in three years, and then only at the regular sessions in January, April or July; and one commissioner shall be elected from each of said districts at the next general election after such organization, one of whom shall be chosen for the term of one year, one for two years, and one for three years, and one annually thereafter as provided by law. [C. L. 530.]

799. Compensation of supervisors. The said supervisors of election shall receive for their services the sum of four dollars per day for the time actually and necessarily employed, and ten cents per mile for necessary travel, to be approved by the governor and audited and paid out of the state treasury. [C. L. 531.]

800. Compensation of other officers. The officer or person serving the notices on the judges of election and posting the notices as provided in this act shall receive for his service the amount authorized by law for like services performed by a sheriff in all organized counties; and the clerk of the county court and other county officers required to perform the services required in this act shall receive two dollars per day for the time actually and necessarily employed; and the printers and publishers shall receive the legal rates for publication of said notices; all of which sums shall be audited and paid by the said unorganized county as soon as the said county shall be organized under the provisions of this act. [C. L. 532.]

801. Failure to post notices. Any failure to publish or post the notice provided for in this act shall not invalidate an election held under the provisions of said act; but if any of the officers shall wilfully fail to perform any of the duties required of him by this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly. [C. L. 533.]

802. Proceedings set aside. If from any legal cause the whole election held under the provisions of this act for the organization of a county should be set aside by the court or judge thereof and declared invalid, then the governor shall have all the authority provided in this act to call a new election, and said county shall be organized as in this act provided. [C. L. 534.]

803. Annexed territory a part of county. Such portion of the state not organized into counties as are annexed to any organized county, shall for judicial and other purposes be deemed to be within the limits and a part of the county to which they are annexed. [C. L. 535.]

ARTICLE 3. DIVISION OF COUNTIES.

804. Petition. Whenever five hundred legal voters of any county in this state, residing in that portion of the county proposed to be segregated, shall petition the board of county commissioners of such county, requesting the said board to call an election at which the question of the segregation of such county, as in this act provided, may be submitted, and describing in said petition the boundaries of said portion proposed to be segregated, and the proposed name of said new county, which

name shall be different from every other county in the state, the board of county commissioners of said county shall, within thirty days after receiving such petition, make an order declaring that it is proposed to organize, with the assent of the qualified voters thereof, a new county out of a portion of their county, describing, as in the petition, the boundaries of said new county, and to give it the name specified in such petition; and said board shall include in said order a notice for an election to be held by the qualified voters in said portion proposed to be segregated, at the usual voting precincts, on some day within thirty days therefrom, to determine whether or not such state shall be the county of —— (giving name as specified in the petition referred to); provided, however, that no petition shall be considered by any board of county commissioners in which it is requested that a county be divided so as to leave less than twenty-two congressional townships, or an equivalent in area, to either part of its divisions; and, provided further, that the number of votes polled at the last general election in any portion desiring to be segregated under the provisions of this act, shall have been seven hundred and fifty or more, and that the number of votes cast at the last general election in that portion of a county from which another portion desires to segregate, under the provisions of this act, shall have been seven hundred and fifty or more; and, provided further, that the question of the division of such county shall have never been submitted to a vote in the said county, by reason of any special act of the legislative assembly of the state of South Dakota. [C. L. 536.]

805. Notice of election. The board of county commissioners, petitioned as provided by section five hundred and thirty-six, shall cause twenty days' notice of such election to be given by publication in a newspaper, if one be published in the proposed new county, and by posting up three copies of said notice at public places in each of the several election precincts within the boundaries of such proposed new county, and shall, at least ten days prior to such election, appoint three capable and discreet persons possessing the qualification of electors to act as judges at each precinct and for each of the polls of election; and notices of such election shall be posted, notices of appointments shall be served, and all other matters for such election shall be governed by the laws then existing, so far as they are applicable, for general elections. [C. L. 537.]

806. Vote by ballot. The qualified voters of any county to be organized under the provisions of this act shall vote by ballot, having thereon the words, "For organization of —— county (giving name specified in the petition referred to in section five hundred and thirty-

six), 'yes;'" or the words, "For organization of _____ county (giving name specified in the petition referred to in section five hundred and thirty-six), 'no.'" [C. L. 538.]

807. Duty of county clerk. On the fifteenth day after the close of any election under this act, or as soon thereafter as all the returns are received, the said board of county commissioners shall proceed to canvass said returns and make a statement showing the whole number of ballots cast at such election, the number having the word "yes" thereon, and the number having the word "no" thereon, and if such county commissioners are satisfied as to the legality of such election, and shall find that two-thirds of the ballots cast at said election have the word "yes" thereon, they shall instruct the county clerk to immediately make a certified copy of such statement and forward the same to the secretary of this state. [C. L. 539.]

808. Appointment of county commissioners. Within thirty days after receiving said certified copy of such statement as provided for by the preceding section of this act, if satisfied that the same is genuine and that the election certified to has been legally held, it shall be the duty of the governor of this state and he is hereby authorized to appoint three persons residents of the county organized under this act, possessing the qualifications of electors, who will accept and qualify in such office, county commissioners for such county, who shall hold their office until the first general or annual election thereafter, i. e., until the Tuesday next after the first Monday in the following month of November, and until their successors shall be elected and qualified; and thereupon, upon the qualifying of said commissioners, said county shall be deemed to have existence as such and be governed by the laws of the state relating to counties. [C. L. 540.]

809. Appointment of other officers. The county commissioners appointed under the provisions of the preceding section of this act, after having qualified according to law, shall appoint all the county officers of the county organized under this act and of which they are commissioners as required by law, who after having qualified shall hold their offices until the first general election thereafter and until their successors shall have been elected and qualified; provided, however, that all justices of the peace and constables in office as such within the boundaries of any county organized under this act shall continue by virtue of their election in office as justices of the peace and constables in and for such county for the remainder of their term, and shall give bonds to the county organized under this act of the same amount and in the same manner as had previously been given by them to the original county. [C. L. 541.]

810. County seat located. Said county commissioners shall have power to temporarily fix the county seat, and such location shall remain the county seat until the first general election thereafter, when the qualified voters of such county are empowered to vote for and select the place of county seat by ballot as provided by law; provided, however, that no person shall be entitled to vote at such election unless he is a qualified elector as provided by the laws then existing. Immediately after the selection of said county seat is ascertained, either by the county commissioners' selection thereof or by the canvass of the returns of votes, the county commissioners shall issue their proclamation announcing such fact, and publish the same in a newspaper published in said county if there be one, or, if not, by posting a copy thereof in a public place in each election precinct of said county. [C. L. 542.]

811. General law governs. In all matters not specially provided for in this act the county commissioners appointed under this act shall be governed by the laws then existing. [C. L. 543.]

812. General election laws govern. All elections under this act where not otherwise provided shall be conducted in the same manner as required by law in general elections, and no refusal or neglect on the part of any official to perform his lawful duties in connection therewith shall in any wise affect the validity of said election. [C. L. 544.]

813. Transcript of records. The commissioners of any county organized under this act are hereby empowered and it is made their duty to procure transcripts of all records of the original county that in their judgment may be necessary for the use and benefit of their county, and it is hereby made the duty of all county officers having the custody of any books, papers and records to allow such commissioners or any authorized person in their behalf full and free access to any and all such books, papers and records for the objects and purposes herein named and for the completion thereof. [C. L. 545.]

814. County indebtedness apportioned. Any county organized under this act shall assume and pay as herein provided a just proportion of the indebtedness of the county from which it segregated, based upon the last assessed valuation of said original county, and in the proportion that the valuation within the segregated portion bears to the aggregate of the valuation within the whole of the original county; and it is hereby made the duty of the commissioners of both the county organized under this act and the county from which the latter segregates, to meet together at the county seat of the original county on the third Monday in the sixth month following the appointment of county commissioners by the governor as provided for in this act. They shall ascertain as near

as may be the total outstanding indebtedness of the original county on the first day of January or July, as the case may require, next preceding the date of the joint session provided for in this section, and from such total they shall make the following deductions, to wit:

1. The amount of all dues for rents.
2. The amount of outstanding bonds given or money paid for public property owned by and remaining within the limits of the original county.
3. The amount of public funds on hand and belonging to the original county on the day for which its outstanding indebtedness is ascertained by the joint board of county commissioners as provided for in this section, and not belonging to the special funds hereinafter mentioned. The amount remaining after such deductions shall have been made shall, for the purpose and as a basis for the settlement herein provided, be the amount which the county organized under this act shall pay a proportion of, and the proportion hereinbefore specified, and it shall be the duty of such commissioners to ascertain and fix the amount the county organized under this act shall assume and pay to the county from which it segregates. [C. L. 546.]

815. Certain moneys to be turned over. All moneys on hand at the time of the settlement provided for in the preceding section of this act, in a county from which a portion segregates, pertaining to special funds, such as fire, school, road funds, and others, and property belonging to the districts within the boundaries of a county organized under this act, shall be turned over in full by the treasurer of the original county to the treasurer of the county organized under this act, and shall be duly receipted for by the latter and shall by him be placed to the credit of the districts within his county to which they properly belong. [C. L. 547.]

816. What moneys turned over to new counties. Any county in which the amount of public funds on hand at the time of settlement provided for in section five hundred and forty-six exceeds the total of its outstanding indebtedness, shall, after deducting such outstanding indebtedness, and after making the deductions provided for in section five hundred and forty-six from the amount of such public funds on hand, pay over to the county segregated from it and organized under this act, a just proportion of such funds, based upon the assessed valuation of the whole of the original county in and for the year prior to the date of such segregation, and in the proportion that the valuation within the segregated portion bears to the aggregate of the valuation within the whole of the original county. The boards of county commissioners shall meet as provided in section five hundred and forty-six and ascertain the

amount so to be paid, and the board of county commissioners of the original county shall issue warrants for such amount, payable immediately to the treasurer of the county organized under this act, and the amount so received by the latter shall be by him placed to the credit of the proper funds of his county. [C. L. 548.]

817. New commissioner districts. The county commissioners of a county from which a portion segregates under this act shall immediately after such segregation redistrict their county into the districts provided for by the laws then existing, and shall fix the vacancies occasioned by such segregation in the manner provided by law for filling vacancies in county district or precinct offices. [C. L. 549.]

818. School and road districts renumbered. School districts and road districts within counties affected by this act shall be renumbered so as to make their numbers in each county run consecutively, and the names of school townships may when necessary be changed. [C. L. 550.]

819. District holden for bonds. When the boundaries of any school district or school township have been changed under and by the provisions of this act, that portion of such school district or school township in which the school houses and other property remain shall be holden for the bonds, if any, issued by such school district or school township, and if such portion shall have been attached to another school district or school township the school district or school township to which such portion has been attached shall be holden for the bonds, if any, of the school district or school township to which such portion formerly belonged. [C. L. 551.]

820. Validity of bonds. The validity of bonds issued by school districts or school townships prior to the division of any county under this act, shall in no wise be affected by such division or by the renumbering or renaming of the school district or school township that issued them. [C. L. 552.]

821. Commissioners' compensation. County commissioners while in the discharge of their duties as provided for in the preceding sections of this act, shall receive the same pay allowed by law as when in the performance of their ordinary official duties. [C. L. 553.]

822. Indebtedness of new county. The amount of indebtedness of a county organized under this act, as ascertained by the two boards of county commissioners in compliance with the provisions of preceding sections of this act, shall be paid to the county from which it segregates, in the bonds of the new county thus segregated, as hereinafter provided. [C. L. 554.]

823. Date of bonds. Such bonds shall be dated on the first day of January or July, from which the outstanding indebtedness of the original county is calculated as provided for in section five hundred and forty-six; shall be issued for a period corresponding with the time or terms on which the obligations of the original county become due and payable; shall be payable at the same place and shall bear the same rate of interest as the obligations of the original county, said commissioners taking care to classify the liquidating bonds, issuing a due proportion of each in proportion to each of the original county obligations bearing different rates of interest and places of payment; and said original county shall have authority to exchange such bonds for an equal amount of obligations of its own of the same class. [C. L. 555.]

824. Bond register. The county treasurer of a county issuing bonds under the provisions of this act shall provide himself with a book to be called the "bond register," wherein he shall note the number and denomination of each bond issued by his county, the date of issue, when and where payable, with such other facts as the county commissioners of his county shall direct, which bond register when completed shall be deposited with the clerk of the county commissioners of his county and shall be and remain a part of the records of the same. [C. L. 556.]

825. Liquidating bonds. The board of county commissioners of a county organized under this act are hereby empowered and directed to issue such liquidating bonds in denominations as may be required by the old county, not to exceed one thousand dollars each, and deliver the same to the county clerk of the old county, who shall receipt therefor, attaching the seal of his office to such receipts, and the county clerk of a county organized under this act shall enter such receipts at large upon the records of the county commissioners and note the same in the bond register of his county. [C. L. 557.]

826. Levy taxes. The board of county commissioners of a county issuing bonds under the provisions of this act shall for each year after the date of issue of such bonds, levy and cause to be collected a tax sufficient to pay the interest on said bonds as it shall become due, and also such sinking funds as shall correspond with the laws under which the bonds of the original county were issued, sufficient to redeem said bonds at maturity; and as fast as such sinking fund shall become available they shall redeem such bonds in the manner provided for redeeming the bonds of the original county; provided, however, that public notice shall be given by such board of county commissioners in a newspaper, if one be published within their county, setting forth that certain bonds, giving their number and otherwise describing them, will be redeemed by their county, and naming the date of such redemption. [C. L. 558.]

827. Moneys not to be diverted. The money collected for the payment of the interest or principal of such bonds shall not be used for any other purpose until such bonds are redeemed; any surplus thereafter shall be placed in the general fund. [C. L. 559.]

828. County revenues. The authority of any county from which a portion segregates under the provisions of this act, for the collection of revenue within the boundaries of the portion segregated, shall cease from the date upon which the two boards of county commissioners under the provisions of section five hundred and forty-six base the settlement between their counties, and all assessments and levies made by the authority of the county from which a portion segregates, by its officers in the lawful performance of their official duties, affecting any of the territory embraced in the boundaries of a county organized under this act, shall remain the same and shall be payable to and collectible by the lawful authorities of the latter only. [C. L. 560.]

829. Judicial subdivision. Any county organized under the provisions of this act shall as soon as its organization shall have been completed constitute and be created a judicial subdivision of the judicial district to which it properly belonged at and before the time of its organization. [C. L. 561.]

830. Terms of circuit court. The judge of the judicial circuit in which a county organized under this act is created a legal subdivision of his district under the provisions of the preceding section, shall appoint and hold terms of the circuit court at the county seat of said county, at least one term each year. [C. L. 562.]

831. Venue, when changed. In all actions or proceedings civil or criminal, the crime wherein was committed or the disputed premises therein be within the boundaries of any judicial subdivision created under the provisions of this act, and which properly belong to such subdivision under provisions of the codes of civil and criminal procedure, the venue thereof shall be changed to the new county by order of the court or the judge thereof, upon the demand of either party, which demand shall be served upon the opposite party or his attorney, if either can conveniently be found in this state; but if neither can conveniently be found in this state then such change of venue may be made upon filing such demand with the clerk of the circuit court having the case on its calendar. [C. L. 563.]

832. Writs, bonds and recognizances. All process, writs, bonds, notices, appeals, recognizances, papers and proceedings in actions changed to a new county under this act and created a legal subdivision thereunder, issued and made returnable to the circuit court of the county

from which a portion has been segregated and organized under this act prior to the creation of such legal subdivision, shall be taken and considered as made, taken and returnable to circuit court within the boundaries of such new judicial subdivision, and such bonds, recognizances and obligations shall be payable to such new county and recoverable upon in the name of such new county, and all papers and certified copies of all proceedings had in such changed actions shall be transmitted by the clerk of the circuit court of the old to the clerk of the circuit court of the new county. [C. L. 564.]

CONSOLIDATION AND CHANGING BOUNDARY LINES OF ORGANIZED COUNTIES.

833. Petition. [Ch. 45, '93.] § 1. Whenever not less than one-third of the electors, based upon the total vote for governor, at the last preceding election of each of two or more adjoining counties of this state, shall petition the board of county commissioners, of their respective counties, that an election be held to determine the question of changing of the boundary lines or the consolidation of two or more counties stating in such petition the names of the counties to be consolidated or boundary lines to be changed, such boards of county commissioners shall at their regular July meeting succeeding the presentation of such petitions, provide that the question of consolidation of the counties or the changing of the boundary lines of such counties, shall be submitted to a vote at the next general election succeeding the presentation of such petitions; provided, such petitions shall have been filed with the county auditors of such counties, prior to the first day of the regular July meeting of the board of county commissioners.

834. Auditor to transmit petition. [Ch. 45, '93.] § 2. The auditor of each of such counties, where such petitions have been filed, shall transmit to the auditor of the other county or counties affected thereby certified copy or copies of the petition or petitions filed in his county.

835. Notice of election. [Ch. 45, '93.] § 3. The auditor of each of such counties shall give thirty (30) days notice by publication, as provided by law for holding such elections and prepare official ballots for such election to conform to the election laws of this state, providing for the submission to the voters of such questions as hereinafter provided.

836. Duty of circuit judges in case of refusal of commissioners. [Ch. 45, '93.] § 4. If in case the county commissioners in either of the counties whose boundaries are to be changed, or counties to be con-

solidated, neglect or refuse to order such election as provided, then upon the petition of any qualified voter to the circuit judge, an order shall be given by said circuit judge forthwith, to the county auditor to take such action as will lawfully submit the question to the voters of such county or counties at such general election.

837. Consolidation determined by voters. [Ch. 45, '93.] § 5. At any election held under the provisions of the first section of this act, the question of changing of boundary lines or consolidation of counties and the location of the county seat of such consolidated counties, shall be determined by the electors of such counties.

838. Majority of voters shall decide. [Ch. 45, '93.] § 6. If a majority of all the votes cast at such election, in each of such counties, shall be in favor of consolidation of two or more counties or the changing of the boundary lines of such counties, they shall be declared consolidated or changed as hereinafter provided.

839. New county shall adopt name of senior county — county seat. [Ch. 45, '93.] § 7 The name of the new county so formed shall take the name of the senior county, and the location receiving the highest number of votes cast at such election, as provided in section one of this act, in the two or more counties for the county seat of the consolidated county, shall be the county seat of such new county.

840. General election laws govern. [Ch. 45, '93.] § 8. The laws governing the holding of elections in this state, shall govern the holding of this election.

841. Auditors to report to governor. [Ch. 45, '93.] § 9. After the canvassing of the returns of such election it shall be the duty of the county auditor of each of such counties to transmit within thirty (30) days a certified report of such canvass to the governor of the state, who shall within twenty (20) days after the receipt of such report proclaim the result of such election and officially notify the county auditor of the respective counties of such proclamation.

842. Consolidation to take effect, when. [Ch. 45, '93.] § 10. If the result of such election as proclaimed is in favor of consolidation or a change of boundaries, then such consolidation or change of boundaries shall be in full force and take effect on the first day of January next [after the] general election held succeeding the proclamation as herein provided.

843. Property to belong to new county. [Ch. 45, '93.] § 11. The property of each of such consolidated counties shall after consolidation become the property of the new county.

844. Indebtedness, how paid. [Ch. 45, '93.] § 12. The indebtedness, if any, of each of such counties shall after consolidation be paid out of taxes levied on the property in the respective territory of the county having contracted the same.

845. County officers, when elected. [Ch. 45, '93.] § 13. There shall be elected in each new county on the next general election held succeeding the proclamation by the governor one set of county officers for such new county; provided, however, that such new county shall be entitled to the same number of representatives to the legislature that such counties had before consolidation and that such a number be elected at such general election until a new apportionment shall have been made.

846. Commissioners districts'—how apportioned. [Ch. 45, '93.] § 14. The board of county commissioners of each of such counties shall after the proclamation of consolidation by the governor as hereinbefore provided, meet in joint session at the office of the county auditor of the county seat of one of such counties on the first Monday in July succeeding such proclamation and proceed to apportion such new counties in five (5) commissioner districts numbering them consecutively, complying as nearly as possible with the provisions of the law now regulating the districting of counties into commissioner districts.

847. Election of commissioners. [Ch. 45, '93.] § 15. There shall be elected at the next general election in each of such commissioner districts a commissioner whose term of office shall be as follows:

District number one, three years.

District number two, two years.

District number three, one year.

District number four, three years.

District number five, two years.

And whose succeeding terms shall be three years.

848. Old officers hold until when. [Ch. 45, '93.] § 16. That the county officers in each of the counties that may have been consolidated shall continue to act in their respective counties until the officers of the new county shall have been elected and qualified.

CONSOLIDATION OF FUNDS.

848a. County commissioners may consolidate road and bridge funds. [Ch. 68, '90.] § 1. That the county commissioners of the several counties of this state are hereby authorized, if they deem it expedient

and for the best interests of the county, to consolidate into one fund the bridge and the road funds, and upon such consolidation there shall be but one fund for bridge and road purposes.

848b. Organized townships not affected. [Ch. 68, '90.] § 2. Nothing in this act shall be construed as to prevent organized townships from levying a township tax for road and bridge purposes.

ADJUSTMENT OF TAXES.

848c. Duty of county commissioners. [Ch. 176, '95.] § 1. In any county wherein only a part of its territory is organized into townships, under the provisions of law relating to township government, and where a bridge tax, and a general fund tax has been levied upon the entire county, it shall be the duty of the board of county commissioners of such county, to ascertain the amount of such bridge tax, and general fund tax, paid by each organized township and the just proportion of the expenses of constructing, repairing and maintaining county bridges with which each township so organized is chargeable, and said board shall then allow, and there shall be paid over to each township upon the first day of January of each year the excess of such taxes over such expenditures, to be used by such township for township, bridge and general purposes. Also the county board shall pay to each township the amount paid by the township to the assessor thereof, upon a sworn statement furnished by the town clerk, said funds to go into the general township fund.

ARTICLE 4. COUNTY SEATS.

LOCATION.

848d. Question to be submitted to a vote. [Ch. 64, '90.] § 1. It is hereby made the duty of the board of county commissioners of any county in this state, in which the county seat has not been located by a majority vote, on a petition being presented to them, at least sixty days before the time for holding the general election, signed by a majority of the qualified electors of said county, as shown by the number of votes cast at the last general election held in said county, to submit the question of location of county seat, to the qualified electors of said county at the next general election, as provided in section two of article nine of the constitution, notice of the submission of said question shall be included in the notice published by the county auditor giving notice of the time and place of holding the general election.

The ticket used at the said election shall contain, in addition to the names of the officers to be voted for, the name of the city or town the elector desires to vote for, and the vote on said question shall be canvassed, certified and returned in the same manner as the vote for state and county officers, and the city or town receiving a majority of all the votes cast shall be the county seat.

Sec. 1, chapter 64, 1890, so far as relates to the presentation of a petition, is unconstitutional under provisions of section 2, article 9, Constitution. State ex rel. Adkins v. Lien et al., 9 S. D. 297; 68 N. W. Rep. 748.

Majority of votes cast upon the particular question is insufficient under section 1, chapter 64, 1890. It must be a majority of all votes cast at such election. Adkins v. Lien et al., S. D. ; 73 N. W. Rep. 909.

848e. Resubmission of question. [Ch. 64, '90.] § 2. If, upon a canvass of the vote cast as herein provided, no city or town shall have received the vote required by the constitution, the question of location of the county seat shall not again be submitted before the expiration of four years. And it is hereby made the duty of the board of county commissioners to give notice of said election in the same manner as provided for in section one of this act, and the vote cast shall be canvassed, certified and returned as hereinbefore provided.

848f. Duty of county officers. [Ch. 64, '90.] § 3. It shall be the duty of county officers, whose offices are required by law, to be kept at the county seat, to remove their respective offices, files, records, office fixtures, furniture and all other property pertaining to their offices, to the county seat designated by the electors, within thirty days after such county seat shall have been designated by the electors under the provisions of this act.

849. Petition for change. Whenever the inhabitants of any county are desirous of changing the place of their county seat, and upon petitions being presented to the county commissioners, signed by two-thirds of the qualified voters of the county, it shall be the duty of the said board, 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. [C. L. 565.]

850. When located on public lands. Whenever any county seat shall be located upon the public lands, it shall be the duty of the county com-

missioners 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, the board shall claim the same as a pre-emption under the laws of the United States, for the use of said county. [C. L. 566.]

Definite and exact topographical boundaries to county seat is not indispensable. *Fall River County v. Powell et al.*, 5 S. D. 49; 58 N. W. Rep. 7.

A particular settlement may be selected as the place of the county seat, although it be at the time unplatted and have no fixed boundaries. *Id.*

851. Survey and plat. The county commissioners shall, within three months after the selection, cause the same to be surveyed in 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. [C. L. 567.]

852. Surplus lots sold. 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 commissioners may deem best, and they may dispose of lots at private sale upon terms as above provided. [C. L. 568.]

853. Certificate to purchaser. Purchasers of the aforesaid lots shall receive a certificate of purchase from said sheriff, entitling the holder to a warranty deed from the county commissioners 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 herein provided. [C. L. 569.]

854. Net proceeds. The proceeds of the sales of the aforesaid lots, after deducting the expenses of the surveyin, 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, at the county seat, and shall be used for no other purpose whatever. [C. L. 570.]

855. What counties may re-locate county seats. [Ch. 53, '89.] § 1. That in all counties within this state having a railroad station within the

limits thereof, the county seat of which is not on the line of a railroad and in the county seat of which there are no public buildings or the same are not built of brick or stone or there is no record vault, the county seat of such counties may be re-located by a majority vote at a special, annual or general election, as hereinafter provided.

856. Petition. [Ch. 53, '89.] § 2. Whenever the voters of any county having a railroad station within its limits, the county seat of which is not located on the line of a railroad and in which there are no public buildings or the same are not constructed of brick or stone or there is no record vault, shall desire to re-locate such county seat they may present to the board of county commissioners thereof at any regular meeting, a petition signed by a majority of the voters of such county as shown by the last preceding general election, demanding that such question of re-location be submitted to the voters of the county and it shall thereupon be the duty of the commissioners to submit the same as follows: If such petition shall be presented to said board at a regular meeting, more than ninety days immediately preceding an annual or general election they shall order a special election and submit thereat such question of re-location; but if such petition shall be so presented in ninety days or less, immediately preceding an annual or general election, then such question shall be submitted to the voters at such annual or general election.

857. Election. [Ch. 53, '89.] § 3. Notice of such election shall be given, polling places established, judges of election appointed and such elections shall be conducted in the same manner as elections held under chapter twenty-seven (27), of the political code.

858. Ballots. [Ch. 53, '89.] § 4. The ballots for such elections shall be printed or written, or partly printed and partly written and shall be substantially as follows:

“For County Seat the City (or Town) of _____” and by such ballot the elector shall designate the city or town for which he desires to cast his vote for county seat.

859. Canvass. [Ch. 53, '89.] § 5. The vote cast at such election shall be canvassed, certified and returned in the same manner as provided in said chapter twenty-seven (27) of the political code, and the county commissioners shall within twenty days after such election, meet and open the returns and declare and enter upon the records the result thereof.

860. Majority vote. [Ch. 53, '89.] § 6. The city or town receiving the highest number of votes, such number being not less than a majority of all the votes cast at such election, shall be the county seat.

861. Donation. [Ch. 53, '89.] § 7. Any incorporated town or city being a candidate for the location of a county seat under this act, shall have power within the limitations prescribed by act of congress of July thirtieth, eighteen hundred and eighty-six, to donate to the county for the purpose of providing public buildings either in its bonds or cash, upon a majority vote of its electors in favor thereof, a sum not exceeding five thousand dollars, and, except from a fund so provided, no public building, other than frame, nor any such buildings costing more than two thousand dollars shall be erected at the place to which any such county seat is removed within five years after such removal.

862. Removal of officers. [Ch. 53, '89.] § 8. It shall be the duty of the several county officers whose offices are required by law to be kept at the county seat, to remove their respective offices, files, records, office fixtures, furniture and all public property pertaining to their respective offices, to the county seat designated by the electors, within sixty days after such county seat shall have been designated by the electors under the provisions of this act.

ARTICLE 5. CORPORATE POWERS AND LIABILITIES OF COUNTIES.

863. County a body corporate — powers. Each organized county is a body corporate for civil and political purposes only, and as such may sue and be sued, plead and be impleaded in any court in this state; 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. [C. L. 572.]

County warrant on general fund regularly issued is a *prima facie* cause of action against the county, and action may be brought directly against the county thereon. *Heffleman v. Pennington County*, 3 S. D. 162; 52 N. W. Rep. 851.

Possession and presentation are *prima facie* evidence of ownership. *Id.*

864. County auditor instructed to bid for real estate sold. [Ch. 43, '91.] § 1. That whenever any real estate shall be advertised to be sold at execution sale, held pursuant to any judgment in an action whereto any county in the state of South Dakota, shall be a party, the board of county commissioners of such county may instruct the county

auditor thereof to bid in such real estate in the name of the county, and shall fix the maximum price to be by him bid for such real estate.

865. Duty of county auditor. [Ch. 43, '91.] § 2. It shall be the duty of the county auditor upon the receipt of such instructions to attend such sale, and in case no more shall be bid for such real estate than the maximum amount fixed by the board of county commissioners to purchase the said real estate at the lowest price at which the same can be procured.

866. County to hold real estate. [Ch. 43, '91.] § 3. Any county is hereby authorized to hold in its own name and for its own benefit all real estate acquired under the provisions of this act.

867. Sale of real estate. [Ch. 43, '91.] § 4. The board of county commissioners of any county holding real estate under the provisions of this act shall have power to direct the sale of said real estate in the manner hereinafter provided, without first submitting the proposition of such sale to a vote of the people; provided, however, that before such sale the board of county commissioners shall appoint three disinterested persons, residents and freeholders of such county to appraise such property, who shall immediately proceed to make such appraisal, and when made the same shall be signed by such appraisers and filed in the office of the county auditor.

868. Price to be obtained. [Ch. 43, '91.] § 5. The sale of such real property shall be conducted in the same manner as the sale of real property on execution, and in no case shall such real property be sold for a sum less than ninety per cent of the appraised value.

869. Salary of appraisers. [Ch. 43, '91.] § 6. The appraisers so appointed shall each receive for his services three dollars per day for each day necessarily employed in making such appraisal.

870. Deed, how executed. [Ch. 43, '91.] § 7. Whenever any real property shall be sold under the provisions of this act the county auditor shall execute a deed therefor under the seal of his office upon the order of the board of county commissioners duly entered upon their records.

871. Judgments, how paid. When any judgment is obtained against a county, the board of county commissioners shall have power at any time after the expiration of six months from the rendition thereof to assess and collect a sufficient amount of revenue to pay off and discharge said judgment, in addition to the ordinary expenses of the

county. But the property of the county and of persons owning property situated or liable to taxation therein, shall in no case be subject to judgment lien or liens, nor to seizure or sale upon execution or other process of any court. [C. L. 573.]

ARTICLE 6. OFFICERS OF COUNTIES.

872. Officers organized counties — election. Each organized county shall have the following officers, to wit: Three commissioners who shall constitute the board of county commissioners, one register of deeds, one county auditor, one clerk of the circuit and county courts, one sheriff, one assessor, one judge of the county court, one county treasurer, one county surveyor, one coroner, one superintendent of public schools, four justices of the peace, and four constables, who shall possess the qualifications of electors, and shall be chosen by the qualified electors of their respective counties at the general election in the year eighteen hundred and seventy-eight, and every two years thereafter, except commissioners (who shall be chosen by the electors of their respective districts, and of which districts such commissioners shall be qualified electors and residents). [C. L. 574.]

872a. Additional justices. [Ch. 107, '99.] § 1. In all counties in this state not organized into civil townships having a population of over twenty thousand (20,000) inhabitants, there shall be elected at each general election eight (8) justices of the peace.

872b. Division of counties. [Ch. 107, '99.] § 2. The county commissioners of each county of over twenty thousand (20,000) inhabitants, shall at their first meeting, after this act goes into effect, divide their counties into eight justice districts in each of which a justice shall be elected, by the electors of the district in which he resides.

872c. Population determined. [Ch. 107, '99.] § 3. The number of votes cast for governor at each general election shall determine the rights of any county to the benefits of this act, and shall be ascertained by multiplying the said number of votes cast, by five (5).

ARTICLE 7. COUNTY COMMISSIONERS.

873. Tenure. The commissioners shall hold their office for the term of three years, except as provided in the statute for the organization of counties, and one shall retire and one be chosen annually, and in counties now organized the order of their election and succession shall remain as now established, and commissioner districts in such counties shall continue as now constituted until changed as provided by law. [C. L. 575.]

874. Five commissioner districts. Whenever one-third of the legal voters of any organized county of this state petition the county commissioners that they desire five county commissioners for said county, and that said county be divided into five commissioner's districts, it is hereby

made the duty of such county commissioners to call the judge of probate and county clerk together within twenty days. The said county commissioners, judge of county court, and county clerk (provided said commissioners are not the commissioners appointed in organizing the county) are hereby constituted a commission and authorized to carry out the provisions of section five hundred and seventy-seven. [C. L. 576.]

875. Manner of division. Upon the meeting of the commission herein [above] provided for, they shall take and subscribe an oath to perform their duty impartially and for the best interest of such county, and elect one of their number chairman and one secretary of the commission; their proceedings shall be reduced to writing and signed by all the members and filed with the county clerk. They shall then consider the petition of such legal voters, and if satisfied that at least one-third of the legal voters of such county as shown by the last election returns has petitioned them, then such commission shall proceed to divide such county into five districts, and so divide it that no two of the then acting commissioners shall reside in one district; they shall then appoint a commissioner for each of the two districts that have no commissioner residing therein, who shall hold their offices until the next general or annual election and until their successors are elected and qualified, the then acting commissioners to continue to hold their respective offices until the term for which they are elected expires. The districts shall be numbered one, two, three, four and five, and the districts in which no acting commissioners reside shall be numbered four and five and at the first general or annual election the commissioner for district number four shall be elected for two years and the commissioner for district number five for three years, and when the terms of office of the commissioners who have been elected (or appointed to fill a vacancy of an elected commissioner) expires, their successors shall be elected for the term of three years, each of whom shall be a resident of the district he is to represent and to be voted for only by the electors of said district. [C. L. 577.]

The board of county commissioners have power to change the boundaries of the commissioner districts of the county. *Territory v. Board of Com'rs of Cass County*, 6 Dak. 89; 50 N. W. Rep. 479.

876. Bond of amount. [Ch. 55, '93.] § 1. Each county commissioner shall execute and file an official bond as required of other county officers, in the penal sum of one thousand dollars to be approved by the clerk of the circuit court.

877. Change of boundaries of commissioner districts. [Ch. 66, '90.] § 1. That it is hereby made the duty of the boards of county commissioners of the several counties in this state at their regular meeting in July A. D. eighteen hundred and ninety, and every three years thereafter, and after giving notice by publication for three weeks in the official papers of the county, to change the boundaries of the commis-

sioner districts in their respective counties, whenever such change shall be necessary, in order that each district shall, without dividing and apportioning the inhabitants of any incorporated city into not more than two commissioner districts; and they shall, as near as may be, without such division, so divide and redistrict that each district may contain as near as may be within one hundred of the same number of votes as shown by the official returns of the votes cast at the last election, held prior to the date of the meeting mentioned herein, at which election state and county officers were elected; provided, in such redistricting no voting precinct shall be divided; provided, also, that no incorporated city shall be divided into more than two commissioner districts.

878. Notice of change to be published. [Ch. 66, '90.] § 2. Whenever the board of county commissioners shall change the boundaries of any district in their county, they shall publish notice of such change giving the boundaries of the new districts, for three consecutive weeks in the official paper or papers in the county, and when no paper is published in the county, the board shall cause notices to be posted in at least three public places in each commissioner district of which the boundaries have been changed.

879. County seal. The board of county commissioners 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; and the impression of the seal hereby required to be kept, by the stamp, shall be sufficient sealing in all cases where sealing is required. [C. L. 578.]

880. Time and place of meeting. [Ch. 66, '99.] The county commissioners shall meet and hold sessions for the transaction of business at the court house in their respective counties, or at the usual place of holding court, on the first Tuesdays in January, April, July and October of each year, and may adjourn from time to time; and the county auditor 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 notices in three public places in the county, or by publication in the official newspapers of the county; Provided, that in case of a vacancy in the office of county auditor, the chairman of the board shall have power to call a special session for the purpose of filling the same. [C. L. 579.]

881. Chairman of board. At the first meeting of the county commissioners in each and every year they shall elect one of their number chairman, who shall act as chairman of the board of said commissioners during the year in which he is elected, or until his successor is elected, and in case of a vacancy from any cause whatever the board of county commissioners shall elect another chairman. [C. L. 580.]

882. Duties. It shall be the duty of the chairman of the board of county commissioners to preside at the meetings of said board; and all

orders made by the board of county commissioners, and all warrants drawn on the county treasurer, shall be signed by the chairman and attested by the county clerk. [C. L. 581.]

883. Tie vote defers decision. When the board of county commissioners 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. [C. L. 582.]

884. Proceedings, copy of, evidence. Copies of the proceedings of the board of county commissioners, duly certified and attested by the county clerk under seal shall be received as evidence in all courts of this state. [C. L. 583.]

885. Preserve order. The board of county commissioners shall have the power to preserve order when sitting as a board, and may punish contempts by fines 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 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. [C. L. 584.]

886. Keep account with treasurer. The said commissioners shall keep a distinct account with the treasurer of the county, 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 warrants 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 board 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 is expended. [C. L. 585.]

Party loaning county treasurer money to cover shortage in settlement with the county commissioners, not liable to county for treasurer's embezzlement. *Nelson County v. Northcote*, 6 S. D. 378; 43 N. W. Rep. 897.

887. Record. 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 number them consecutively as allowed from the first day of January to the thirty-first day of December in each year. [C. L. 586.]

888. Bridge and road record. They shall keep a book for the entry of all proceedings and adjudications relating to bridges, and the establishment, change or discontinuance of roads. [C. L. 587.]

889. Warrant register. 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. [C. L. 588.]

890. Cancellation of warrants. The board of commissioners of the several counties of this state are hereby authorized and required at each regular meeting to cancel and destroy all warrants drawn on any fund of the county which may have remained uncalled for and on file for a period of six years and upwards next preceding the regular meeting on which the cancellation takes place. [C. L. 589.]

891. Description of cancelled warrant entered. Said commissioners before cancelling and destroying any such warrants shall cause to be entered in the minutes of their proceedings a brief description thereof, containing the name of the payee, the number, date and amount of each warrant to be destroyed. [C. L. 590.]

892. Board prosecute civil action. They shall have power to institute and prosecute civil actions in the name of the county, for and on behalf of the county. [C. L. 591.]

Civil action brought by state's attorney, in his official capacity, on behalf of a county against the treasurer of the county and his sureties, is presumed to have been brought under authority and order of the board of county commissioners. *Jerauld County v. Williams*, 7 S. D. 196; 63 N. W. Rep. 905.

893. Specific powers. They shall have power to make all orders respecting 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 the board of commissioners, reciting the order, and signed and acknowledged by him for and on behalf of the county; 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.

2. They shall have power to levy a tax not exceeding the amount now authorized by law, and to liquidate indebtedness.

3. 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.

4. To construct and repair bridges, and to open, lay out, vacate and change highways; to establish election precincts in their county and appoint the judges of election; and to equalize the assessment roll of their county, in the manner provided by law.

5. To furnish the necessary blank books, blanks and stationery for clerks of the circuit court, county clerk, register of deeds, county treasurer and county judge of their respective counties, to be paid out of the county treasury; also a fire-proof safe when in their judgment the same shall be deemed advisable, in which to keep all the books, records, vouchers, and papers pertaining to the business of the board.

6. To do and perform such other duties and acts that boards of county commissioners are now or may hereafter be required by law to do and perform. [C. L. 592.]

County commissioners have power to compromise a disputed claim of the county after judgment and pending appeal, by the acceptance of an amount less than the amount of the judgment. *State v. Davis et al.*, 75 N. W. Rep. 897.

Boards of county commissioners cannot be vested with judicial powers. *Spencer et al. v. Sully County*, 4 S. D. 474; 3 N. W. Rep. 97.

County treasurer alone is empowered to designate paper in which to publish delinquent tax list. *Dewell et al. v. Board of County Com'rs*, 8 S. D. 452; 66 N. W. Rep. 1079.

894. Fiscal agents of the county. They 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 sessions, and at one public place in each precinct of the county. [C. L. 593.]

895. Procure original field notes. Said board is authorized to procure for their county a copy of the field 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 constructed therefrom 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. [C. L. 594.]

896. Extraordinary expenditure submitted to vote. They shall submit to the people of the county at any regular or special election any question involving an extraordinary outlay of money by the county, or any expenditure greater in amount than can be provided for by the annual tax, or whether the county will construct any court house, jail

or other public building, or aid or construct any road or bridge, and may aid any enterprise designed for the county whenever a majority of the people thereof shall authorize the same as hereinafter provided. [C. L. 595.]

897. Depreciated warrants. When county warrants are at a depreciated value, the said commissioners may in a 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, or for constructing or ordering to be constructed 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. [C. L. 596.]

898. Questions, how submitted. 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. [C. L. 597.]

899. Proposition to tax must be submitted also. When the question submitted involves the borrowing or expenditure of money the proposition of the question must be accompanied by a proposition to lay a tax for the payment thereof in addition to the usual taxes under section fifteen hundred and eighty-nine; 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. [C. L. 598.]

900. Limitation on rate of taxation. The rate of tax levied in pursuance of the last four sections 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 laws of this state. [C. L. 599.]

901. Record of vote — cannot rescind. The said commissioners being satisfied that the above requirements have been substantially complied with, and that a majority of the votes were 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. [C. L. 600.]

902. Money specifically applied. Money raised by the county commissioners in pursuance of the last six sections is specially appropriated and constitutes a fund distinct from all others, in the hands of the county treasurer, until the obligations assumed are discharged. [C. L. 601.]

903. Unexpended balance. Whenever there remains in the treasury of any county an unexpended balance of any special fund, and all claims against such fund have been fully paid, and the purpose for which it was created has been fully subserved, and there remains no further use for such balance for the purpose for which it was created, it shall be lawful for the board of the county commissioners of such county to transfer such balance to any other fund of the county or subdivisions to which such balance belonged. [C. L. 602.]

904. Transfer of funds. [Ch. 51, '89.] § 1. The board of county commissioners of any county may at any regular meeting thereof and they are hereby authorized and empowered to transfer to the general fund any unexpended balances which are or may be in the county treasury, belonging to the road and bridge fund, when in their opinion such transfer will be beneficial to the county.

905. Warrants, how executed and attested. All warrants upon the county treasury shall be issued upon the order of the board of county commissioners, signed by the chairman thereof and attested by the signature of the county clerk with the county seal attached, and shall designate the fund upon which they are drawn. [C. L. 603.]

906. Sessions public. They 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 session only, but they may continue any business from any regular session to an intermediate day. [C. L. 604.]

907. Record. The books required to be kept by this article shall constitute the record of the board of county commissioners. [C. L. 605.]

908. Board provide offices, jail, court room, etc. In any county where there is no court house or jail erected by the county, or where those erected have not sufficient capacity, it shall be the duty of the board of county commissioners to provide for court room, jail, and offices for the following named officers: sheriff, treasurer, register of deeds, district attorney, auditor, clerk of the district court, superintendent of public schools, and judge of probate; to be furnished by such county in a suitable building or buildings, for the lowest rent to be obtained at the county seat, or to secure and occupy suitable rooms at a free rent within the limits of the county seat or any of the additions thereto until such county builds a court house. They shall also provide the courts appointed to be held therein with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of their business. If the commissioners neglect, the court may order the sheriff to do so, and the expense incurred by him in carrying the order into effect, when certified by the court, shall be a county charge. [C. L. 606.]

909. Erect buildings from current revenues. Said board shall have authority and power, under the provisions of this chapter, to provide for the erection and repairing of court houses, jails, and other necessary buildings within and for the county, and to make contracts on behalf of the county for the building or repairing of the same; but no expenditure for the purpose herein named greater than can be paid out of the annual revenue of the county for the current year, shall be made unless the question of such expenditure shall have first been submitted to a vote of the qualified voters of such county, and shall have been approved by a majority of the votes so cast; and the board shall determine the amount and rate of taxes to be submitted to a vote for such purpose. [C. L. 607.]

910. Use building fund. After a building fund has been accumulated, either from the proceeds of the sale of town lots or from any other source, it shall be the duty of the board of county commissioners within one year from the time such fund becomes available, to proceed to the erection of the necessary county buildings, including a jail, if such fund shall in the judgment of the board be sufficient for that purpose. [C. L. 608.]

911. Contracts let on competitive bids. [Ch. 53, '95.] The board shall cause an advertisement for bids for the erection of such buildings to be printed in some newspaper published in the county for at least four consecutive weeks prior to the opening of the bids, and in such other newspaper in the territory and for such period as the board may deem advisable. Such advertisement shall state where the plans and specifications may be examined and the time allowed for the completion of such buildings, and when the bids will be opened and passed upon by the board, which must be at one of the regular sessions of the board, and must be public, the lowest responsible bid must in all cases be accepted and the contracts for such buildings shall be so conditioned that not more than one-half of the payment for the same shall be made until the contract shall be executed and the buildings completed to the satisfaction and acceptance of the board. Said board may further require a bond to accompany each bid, conditioned that the bidder will enter into a contract, with approved security for the performance of the work in accordance with the plans and specifications, in case his bid is accepted. [C. L. 609.]

912. Appeals. From all decisions of the board of commissioners upon matters properly before them, there shall be allowed an appeal to the circuit 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 circuit court; said bonds shall be executed to the county, and may be sued in the name of the county upon breach of any condition therein; provided, that any state's attorney, upon the written demand of at least seven taxpayers of the county, shall take an appeal from any action of the board of county commissioners of any county within his district when said action relates to the interests or affairs of the county at large or any portion thereof, in the name of the proper county, when he deems it to the interest of the county so to do; and in such case no bond shall be required or given, and upon serving the notice provided for in section six hundred and eleven, the county clerk shall proceed the same as if a bond had been filed, and his fees for making the transcript shall be paid as other claims by the county. [C. L. 610.]

Appeal will lie from decision of board of county commissioners while sitting as a board of equalization. *Pierre Water-Works Co. v. Hughes County*, 5 S. D. 145; 37 N. W. Rep. 733.

Rejection of a bill by the board of county commissioners, no appeal being taken, is not a bar to an action against the county in the district court. *Spencer et al. v. Sully County*, 4 S. D. 474; 33 N. W. Rep. 97.

913. Notice, when served. 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. [C. L. 611.]

914. Filing appeal. Said appeal shall be filed by the first day of the circuit court next after such appeal, and said cause shall stand for trial at such term. [C. L. 612.]

915. Trial de novo on appeals. All appeals thus taken to the circuit court shall be docketed as other causes pending therein, and the same shall be heard and determined de novo [C. L. 613.]

916. Power of circuit court. The circuit 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. [C. L. 614.]

917. Official settlements. 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. [C. L. 615.]

918. Ascertain amount of redemption money. It shall be the duty of the board of county commissioners in the several counties of this state, at each annual meeting of said board, to examine the county treasurer's "tax-sale book" and "stub receipts," and ascertain the amount of redemption money in the treasury and compel the said treasurer to account for the same. [C. L. 616.]

919. Penalty for neglect to deliver money. 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; and such delinquent shall not be entitled to any commission, and shall forfeit and pay to the county a penalty of twenty per cent. on the amount of funds due the county. [C. L. 617.]

Judgment against county treasurer's bond may include 20 per cent. penalty against the sureties, as well as against the principal. *Jerauld County v. Williams et al.*, 7 S. D. 196; 63 N. W. Rep. 905.

920. Interest on county orders. All county orders hereafter 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 draw interest at the rate of seven per cent per annum. [C. L. 618.]

ERECTION OF COUNTY BUILDINGS.

921. Power to bond. [Ch. 49, '97.] § 1. That whenever any county of this state having five hundred voters or more shall have been organized for four years or more and the county seat of such county has been permanently located as provided by law, and the building or buildings occupied by such county for court house, office or jail purposes are inadequate to the wants thereof or unsafe by reason of extraordinary risk by fire or otherwise, then such county may issue its bonds for the purpose of purchasing the site therefor, and for the erection of a court house or jail, or both, under the restrictions and according to the provisions of this act.

922. Limitation. [Ch. 49, '97.] § 2. No county shall issue its bonds under the provisions of this act in excess of five per cent. of its valuation according to its last assessment thereof, and including all of the outstanding indebtedness of such county at the time of issuing such bonds.

923. Election for county buildings. [Ch. 49, '97.] § 3. Whenever in the judgment of the majority of the board of county commissioners in any county, which comes under the provisions of this act, such county has insufficient or inadequate buildings for its use for court house or jail, or both, such board may order an election for the purpose of determining, by a vote of the electors of such county, or may submit at any general election, the question of issuing its bonds for the purpose of the erection of a court house or jail, or both, as by this act provided, including, if none is provided the purchase of a site for such court house or jail, or both, at the county seat. Such election shall be held in the manner and upon the notice prescribed by law for other elections, and the notice of such elections as published, shall state the maximum amount of bonds to be issued, and the purpose for which they are to be issued, and the ballots shall have printed thereon, substantially the same language as is included in the notice of election as aforesaid, and at the foot thereof shall be printed the words: "Shall the above proposition be approved and the bonds issued," with the words "yes" and "no" printed immediately at the left thereof, each preceded by a square wherein the

voter can place a cross opposite the word "yes" for voting in favor of proposition, or a cross in front of the word "no" for voting against the same; and if a majority of the ballots so cast shall be in favor of the issuance of such bonds, that [then] the county commissioners shall issue and dispose of said bonds as provided by this act, and erect a court house or jail, or booth, for the use of such county, according to the provisions of this act.

924. Contracts. [Ch. 49, '97.] § 4. The board of county commissioners of any county erecting county buildings under the provisions of this act shall have power to purchase ground for site, if necessary, let contracts for the building and completion of such court house or jail, or both, and the buildings connected therewith, and shall have the entire supervision of its construction; provided, that all contracts connected with the erection of said buildings shall be let to the lowest and best bidder, after the notice of the letting of such contracts shall have been published in at least one of the leading newspapers of such county, and in case there are no newspapers in such county, then in one of the leading newspapers in some adjoining county for at least once a week for four consecutive weeks, before the letting of said contracts, and the board shall have power to reject any or all bids.

925. Auditing. [Ch. 49, '97.] § 5. The county auditor, county treasurer and some qualified elector and freeholder of such county appointed by the board of county commissioners outside of their own number, shall act as a board of auditors to audit accounts of such board of county commissioners in connection with the erection of county buildings, pursuant to the provisions of this act, and said board of auditors shall receive for their services the sum of three dollars (\$3.00) each for every day actually and necessarily employed in such capacity, to be paid upon the warrant of such board of county commissioners.

926. Denominations of bonds — form. [Ch. 49, '97.] § 6. All bonds issued pursuant to and under the provisions of this act, shall be in denominations of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00); shall bear the date of their issue; shall be made payable to purchaser or bearer, and become due in not less than five nor more than twenty years from their date, and shall bear interest at the rate of not exceeding six per cent. per annum payable semi-annually with coupons attached for each interest payment. They may contain an option authorizing the county to pay the same in five years or multiples of five years, from their date, and before the maturity of the same. The bonds and each coupon shall be signed by the chairman of the board of county commissioners and shall be attested by the county auditor. The seal of the county shall be affixed to each bond,

but not to the coupons, and said bonds shall each contain a recital in substantially the following words: "Issued in pursuance of an act of the fifth legislature of the state of South Dakota, entitled, "an act authorizing and empowering organized counties of South Dakota to erect county buildings for court house and jail purposes and to issue and dispose of bonds to provide funds to pay therefor, and to provide for the payment of principal and interest of such bonds." Said bonds shall be printed, engraved or lithographed on good bond paper and may be made payable anywhere in the United States and shall be sold by the board of county commissioners at not less than their par value, and the proceeds applied solely to the payment of the indebtedness incurred in the erection of court house or jail, or both, and purchase of site therefor, when no site has previously been procured; said bonds or any of them, shall not be sold until after having been duly advertised at least once a week, for four successive weeks in one of the leading newspapers published at the seat of government of this state, and also shall be published for the same length of time in at least one newspaper of general circulation published in the county issuing such bonds. The proceeds of the sale of said bonds shall be deposited in the treasury of said county to be paid out by the county treasurer of said county on order of said board of county commissioners. The county treasurer of said county shall give an additional bond to said county in double the amount of the bonds so issued and sold, and shall receive as compensation for the receiving and disbursing of all funds arising from the sale of said bonds one per centum of the par value of said bonds, and the compensation herein provided for shall be in lieu of all other commissions allowed him by law

927. Tax. [Ch. 49, '97.] § 7. The board of county commissioners shall levy each year upon the taxable property of the county a sufficient tax to pay the interest on said bonds as the same accrues and a reasonable time before maturity sufficient tax to provide a sinking fund for the payment of the bonds when they mature.

928. Payment. [Ch. 49, '97.] § 8. When said bonds and the several coupons thereto attached mature it shall be the duty of the county treasurer to pay the same on presentation and to cancel them when paid.

929. Registry. [Ch. 49, '97.] § 9. Before the bonds are delivered to the purchaser they shall be presented to the county auditor, who shall register them in a book kept for that purpose and known as "the bond register," in which register he shall enter the number of each bond, its date, date of maturity, amount, rate of interest, to whom and where payable.

930. Negotiable. [Ch. 49, '97.] § 10. Bonds issued in substantial conformity to this act shall be in law considered negotiable.

931. Funding bonds. [Ch. 49, '97.] § 11. Any county in this state which has issued warrants or other evidence of indebtedness since January first, eighteen hundred and ninety-five, for the purpose of building a court house or jail, or both, may issue bonds under the provisions of this act to fund such warrants or other evidence of indebtedness, and if such indebtedness was authorized by a majority vote of the qualified electors of such county previous to the incurring of the same, no new election shall be had, and the board of county commissioners of any such county is hereby authorized and empowered when in the judgment of such board it is deemed to the best interests of such county to issue such bonds, and to apply the proceeds solely to the redemption of such warrants or other evidences of indebtedness; provided, the bonds issued under the provisions of this section shall bear a lower rate of interest than the outstanding indebtedness proposed to be funded.

932. Power extended. [Ch. 49, '97.] § 12. Any county in this state which has heretofore and since January first, eighteen hundred and ninety-five, submitted to the voters of such county the question of building a court house or jail, or both, and issuing bonds therefor and upon such election the building of a court house or jail, or both, and the issuing of bonds therefor was authorized or directed by a majority vote of the qualified electors of such county as evidenced by a majority of the votes cast at such election upon said question so submitted to them, no new election shall be had, but such elections and the bonds when issued thereunder are hereby held and declared legal and valid as if the election had been held after the passage and approval of this act, and the board of county commissioners of any such county are hereby authorized and empowered to issue such bonds, and with the funds so obtained from the sale thereof to construct a court house or jail, or both, and are also hereby empowered to purchase a site for such court house or jail, or both, at such county seat if none is provided and pay for the same out of any unappropriated moneys in the county treasury, or contract in the name and in behalf of the county for the sale and conveyance of such site, to be paid for from the proceeds of such bonds when negotiated.

LEGAL NEWSPAPER.

933. Defined. [Ch. 131, 95; ch. 114, '93.] § 1. That no newspaper shall be considered a legal newspaper for the publication of legal and other official notices unless the same shall have bona fide circula-

tion of two hundred (200) copies weekly, and shall have been published in the county for at least one (1) year prior to the publication of such notices, and be printed either in whole or in part in an office maintained at the place of publication; provided, that any newspaper in whatever language it may be printed or published which shall have had the circulation above specified and been published and printed as above required, shall be considered a legal newspaper for the publication of the official proceedings of the board of county commissioners, only, of all counties in this state, having more than one official newspaper; provided, further that it shall not be lawful for the board of county commissioners in any such county to publish their proceedings in more than one of the newspapers of such county which is printed or published in a foreign language; provided, further, that the consolidation or union of any two or more newspapers, any or all of which were before such consolidation legal newspapers as defined in this section, shall in no manner affect the legality of the newspaper formed by such consolidation, and the same shall be deemed to have complied with the requirements of a legal newspaper and to be a legal newspaper as above defined; and provided further, that all notices published in such consolidated newspaper since the enactment of chapter one hundred and fourteen of the session laws of eighteen hundred and ninety-three shall be deemed to have been published in such legal newspaper.

934. Affidavit of publication — to contain what. [Ch. 114, '93.]

§ 2. That all legal and other official notices shall be published in a legal newspaper as defined in section one of this act, and that the affidavit of publication shall state that said newspaper is a legal newspaper, which affidavit shall be prima facie evidence of that fact.

935. Provisions of this act not to apply, when. [Ch. 114, '93.]

§ 3. The provisions of this act shall not apply in counties wherein but one newspaper is published, or in counties where no newspaper has been published for a period of one year prior to the publication of such legal or other official notices, or in counties where no newspaper is published having the circulation required in section one of this act.

936. Official newspapers. [Ch. 50, '97.] § 1. At the first regular quarterly meeting after taking effect of this act, and annually thereafter in January, it shall be the duty of the board of county commissioners of the several counties of this state to designate three legal newspapers printed in their respective counties as official newspapers, or in case there shall not be three newspapers within such county eligible to make legal publication, then as many newspapers as are

so eligible, in which legal newspapers shall be published a full and complete report of all of their official proceedings at all regular and special meetings, and such proceedings shall be so published as soon after any meeting of the commissioners as practicable, and the board of county commissioners shall pay for publishing such proceeding at the rate of twenty-five cents per square of twelve lines of solid brevier type, or the equivalent, to each newspaper designated to publish such proceedings. All notices required by law to be published by the county auditor shall also be published in the official newspapers designated by the county commissioners. The editor, publisher or foreman of each official newspaper shall file or cause to be filed with the county auditor an affidavit of publication, executed in due form, of all such legal official publications so made; provided, however, that not more than two newspapers of the same political faith shall be designated within the county, nor more than one of the same political faith within the same municipality if there are other legal newspapers of the same political faith published elsewhere within the county; provided, further, that in counties where the newspapers are all of the same political faith, three newspapers shall be designated. [C. L. 619.]

937. Duty of county clerk. [Ch. 54, '95.] "It is hereby made the duty of the county clerk to make out a full and complete report of the proceedings of each regular and special meeting of the board, and to transmit the same to the publishers of the newspapers selected by such board to publish such proceedings. Said report to be made out and transmitted by such clerk within one week from the time such proceedings are held." [C. L. 620.]

938. Duty of publisher. It shall be the duty of the publisher of any newspaper selected to publish any proceedings of the board of commissioners of the several counties, to cause any proceedings as aforesaid received by him from such county clerk, to be published in the issue of his paper next succeeding the time of their reception. [C. L. 621.]

939. Purchase Melville Justice Practice. The county board of each county in the state of South Dakota, is hereby authorized to purchase for each justice of the peace in their respective counties, at a price not exceeding five dollars per volume, one copy of the "Dakota Justice Court Practice, Civil and Criminal," prepared, copyrighted and published by Americus B. Melville. Whenever any county board shall purchase and receive one or more of said books, the chairman of said board, together with the county clerk, shall sign a warrant of the

county in an amount equal to the price agreed to be paid for said books, and shall deliver the same on demand to the publisher. [C. L. 622.]

940. Duties in relation to certain bills. [Ch. 56, '93.] § 1. That it shall be unlawful for any board of county commissioners of the state of South Dakota to allow any bill for printing any county stationery on which the name of any person is printed.

941. Suits, how instituted — duty of county commissioners. [Ch. 63, '95.] § 1. No suit shall be instituted against any county of this state to enforce the collection of a claim against said county, unless said claim has been duly presented to and acted upon by the board of commissioners of such county; provided, that in case said board of county commissioners, having had such claim before it at a regular meeting thereof, shall fail and neglect to act upon such claim, it shall then be lawful for the owner of such claim, or his legal representatives, to bring suit in any competent court of this state to enforce the collection of said claim, and provided further, that this act shall not apply to cases where purely equitable relief is sought.

ARTICLE 8. REGISTER OF DEEDS.

942. Instruments recorded — indorsements and foot notes. The register of deeds shall keep a full and true record, in proper books kept for that purpose, of all deeds, mortgages, bills of sale, chattel mortgages and all other instruments authorized by law to be admitted to record, filed with him for that purpose, provided the person so filing them for record shall first pay him the fees provided by law for recording the same. When an instrument is filed with him for record he shall indorse thereon the date and hour and minute of the day of such filing, and, when recorded, also the pages and designating letters or numbers of the book of records in which the record thereof is made; and in a note at the foot of the record of each instrument of whatever kind recorded by him he shall write the date of the hour and minute of the day when it was filed with him, and the numbers of the pages on which it is recorded. [C. L. 624.]

943. Seal. In every county in which the register of deeds is not ex-officio county clerk, the register of deeds of such county shall provide himself with a seal and make an impression of the same upon every instrument to which he attaches his signature as such. Said seal shall bear the following inscription: "Register of deeds of county," as the case may be. [C. L. 625.]

944. Numerical index. The registers of deeds shall prepare from the records of their offices respectively, and shall hereafter keep a numerical index of the deeds, mortgages, and other instruments of record in their respective offices affecting or relating to the title to real property. [C. L. 626.]

945. Separate indexes. There shall be prepared and kept one index of the deeds and contracts and other instruments, not liens merely, and another index of the mortgages and other liens, which indexes shall be substantially or as near as may be in the following forms:

Form of Numerical Index to City and Town Property.

BLOCK NO. 1, IN.....

NO. OF LOT.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.
1																
2																
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17																
18																

Form of Sectional System of Numerical Index to Real Estate.

TOWNSHIP NO.....RANGE NO.....SECTION NO.....

NO. OF SECTION.	Quarter Sec.	Part Quarter Sec.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.
1.....	N. E.....	N. E. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		N. W. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		S. W. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	N. W.....	S. E. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		N. E. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		N. W. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	S. W.....	S. W. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		S. E. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		N. E. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	S. E.....	N. W. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		S. W. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		S. E. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

[C. L. 627.]

946. Compensation for making index. For the making and preparing of the index to the instruments now of record, the registers of deeds shall be allowed by the county commissioners, and paid out of the county treasury of their respective counties, such just sum as shall be reasonable and proper, and for keeping such indexes hereafter they shall receive no compensation beyond their fees now allowed, or that may hereafter be allowed, for the recording of instruments, the indexing being a part of their duties in recording the instrument; provided, however, that it shall be discretionary with the board of county commissioners of the counties of Union, Bon Homme, Minnehaha, Brookings, Burleigh and Clay as to whether they will adopt the foregoing provisions relating to a numerical index. [C. L. 628.]

947. Grantor and grantee index. The registers of deeds of each county in this state shall prepare from the records of their offices respectively, and shall hereafter keep grantor and grantee indexes of the deeds, mortgages and other instruments of record on file in their respective offices, affecting or relating to the title of real property, in addition to the numerical indexes as now kept. [C. L. 629.]

948. Separate index for deeds and liens. There shall be prepared and kept one index of the deeds and contracts and other instruments not liens merely, and another index of the mortgages and other instruments which are liens, which indexes shall show the names of the grantors and grantees, dates of instruments, dates of filing and descriptions of property affected. [C. L. 630.]

949. Compensation for making index. For the making and preparing of the indexes to the instruments now of record, the register of deeds shall be allowed by the county commissioners, and paid out of the county treasury of their respective counties, such just sum as shall be reasonable and proper, not to exceed three cents per description, and for keeping such indexes hereafter they shall receive no compensation beyond their fees now allowed, or that may hereafter be allowed for the recording or filing of instruments, the indexing being a part of their duties in recording or filing the instruments. [C. L. 631.]

950. To procure town site record. [Ch. 159, '95.] § 1. In counties where town sites are now or may hereafter be located upon government lands it shall be the duty of the register of deeds to procure a book, to be known as the town site deed record, in which they shall record all deeds made by the county judge or the mayor of any city, or other competent officer, conveying any of said town site property to claimants or trustees.

951. Past acts legalized. [Ch. 159, '95.] § 2. All former acts of registers of deeds in regard to the filing, recording and indexing of such town site deeds are hereby legalized.

952. Unlawful fees. [Ch. 91, '90.] § 1. It shall be unlawful for any register of deeds, or his deputy, to collect a fee or compensation for discharging, or cancelling, or satisfying chattel mortgages filed in his office.

ARTICLE 9. COUNTY TREASURER.

953. Duty of county treasurer. It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatever source they may be derived, and other moneys which by law are directed to be paid to him, and all moneys received by him for the use of the county shall be paid by him only on the warrant of the board of county commissioners drawn according to law, and all other moneys shall be paid over by him as provided by law. [C. L. 637.]

954. Accounts, methods and publicity. He shall be the collector of taxes, shall keep his office at the county seat, and shall attend his office three days in each week. He shall be charged with the amount of all tax lists in his hands for collection, and credited with the amounts collected thereon, and the delinquent list, 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 indorsed, 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 state, 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. [C. L. 638.]

955. Board to examine and settle accounts. 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 board of county commissioners, and at the regular meetings of the board in January and July of each year, and at such other times as they may direct, he shall settle with them his accounts as treasurer, and for that purpose shall exhibit to them all his books, accounts, and moneys, and all vouchers relating to the same, to be audited and allowed, which vouchers shall be retained by them for evidence of his settlement; and if found correct the accounts shall be so certified; if not, he shall be liable on his bond. [C. L. 639.]

956. Insure county property. When directed by the board of county commissioners he shall cause to be insured, at the charge of the county, any or all of the public buildings and property belonging to the same, in the name of himself as treasurer and his successors in office, or otherwise as said board may direct; and in case of the destruction or damage of the buildings or property so insured, such treasurer shall demand and receive the moneys due on account of such insurance, and pay the same into the county treasury, and such moneys shall be applied to the fund for rebuilding or restoring such buildings or property. [C. L. 640.]

957. Certify to abstract — fees. It is hereby made the duty of each county treasurer of the county where the property is situated to attach

his certificate to each and all abstracts of title to real estate that may be presented to him for that purpose, which certificate shall show the amount of due and unpaid taxes against, or tax title affecting, the land described in such abstract, as the same shall appear from the records in his office; and for compensation therefor he shall receive the sum of twenty-five cents for each abstract so certified, and for each failure or refusal to comply with the provisions of this act he shall be liable to a fine not to exceed the sum of one hundred dollars. [C. L. 641.]

SALARY OF COUNTY TREASURER.*

958. Salary. [Ch. 134, '90.] § 1. Register of deeds and county treasurers shall each receive a salary not exceeding one thousand five hundred dollars per annum, as provided in this act, to be paid monthly from the special salary fund by warrant, which shall be liable during the year only to salary warrants, and at the end of the year any surplus shall be covered into the treasury and placed to the credit of the general fund; provided, that in counties having a population of more than fifteen thousand inhabitants the salary of said officer shall be two thousand dollars per annum, and no more.

959. Salary fund, how created. [Ch. 134, '90.] § 2. Each officer named in section one of this act shall keep a book to be provided by the county, in which shall be a part of the public records of his office, in which shall be entered each item of fees for service rendered, and shall, within three days after the close of each calendar month, and also at the end of his term of office, file with the county auditor or county clerk a statement, under oath, showing the fees which he has received as such officer since the date of his last report, or the beginning of his term of office, and also within said three days deposit with the county treasurer the total sum of such fees, which sum so deposited shall be placed to the credit of the special salary fund.

960. Salary not to exceed fees — deficiency provided for. [Ch. 134, '90.] § 3. In case the fees paid into the county treasury by any officer named in section one of this act shall not equal his salary of one thousand five hundred dollars, as fixed herein, then and in that case such officer shall only be entitled to receive a sum equal to the fees paid into the treasury; and provided further, that in case there may be a deficiency in the salary of such officer for any quarter year or fractional quarter year, the deficiency shall be made up from any excess of fees that may be paid into the county treasury by any such officer for ser-

* This law does not apply to Registers. See 962.

VICES rendered during the calendar year in which said deficiency occurred.

961. Penalty for failure to collect fees. [Ch. 134, '90.] § 4. Any officer named in section one of this act who shall neglect or omit to charge or collect the fees allowed by law for services rendered, or shall fail or neglect to keep a record of the same, or to make a correct statement thereof to the county auditor or county clerk, with the intent to evade the provisions of this act, shall be deemed guilty of a misdemeanor.

962. Deputies and clerks, how appointed — salary not to exceed fees. [Ch. 134, '90.] § 5. If, in the judgment of the board of county commissioners of any county, it shall be deemed necessary for the prompt and accurate dispatch of business in the office of the register of deeds or county treasurer that deputies or clerks be employed therein, they shall by resolution fix the number of clerks to be employed, and the compensation which they shall receive, which compensation shall be paid monthly from the special salary fund by warrant; provided, that the officer in whose office such deputies or clerks are to be employed shall have the sole power of appointing the same and of removing them at pleasure; provided further, that the total amount paid to the register of deeds or county treasurer for salary and clerk hire shall not exceed the amount of fees by such officers collected; provided further, that any officer who shall receive and appropriate to his own use and benefit any part of the salary allowed any clerk employed under the provisions of this act shall be deemed guilty of a misdemeanor.

963. Population, how to be determined. [Ch. 134, '90.] § 6. On the request of the register of deeds and county treasurer of any county it shall be the duty of the county auditor or county clerk to immediately make out and file in the office of the clerk of the circuit court his certificate under seal of the population of his county, which certificate shall be conclusive of such population to be determined in the following manner: Take the total vote cast for governor in said county at the last general election and multiply the same by five and the product thereof shall be the population of said county for the purposes of this act.

ARTICLE 10. COUNTY CLERK.

965. Register of deeds is county clerk. The register of deeds and his deputies duly appointed shall be ex-officio county clerk and deputies

thereof respectively; and he shall be liable on his official oath and bond as register of deeds for the due and faithful performance of the duties of county clerk. [C. L. 642.]

966. Record of county commissioners. The county clerk shall attend the sessions of the board of county commissioners, and keep a true and full record of their proceedings in books to be provided for that purpose. [C. L. 643.]

967. General duties. He shall do, perform and transact all county business without any extra or greater compensation than is allowed by law; and shall keep all the books required to be kept by the county commissioners; 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 state. [C. L. 644.]

968. Election duties. The county clerk shall perform all the duties required of him by law relative to the making out and delivering notices of special and general elections, making abstracts of and canvassing the votes cast at any special or general election, issuing certificates of election to members of the legislative assembly, county and precinct officers, and forwarding the abstracts of votes cast at general or special elections to the secretary of the state; and whenever the county commissioners for any cause shall fail or refuse to call special elections, the county clerk shall have authority to provide for and call any special election under any of the statutes of the state, in force within his county, upon the petition of a majority of all the legal voters of the county, to be determined by the poll lists of the last general election preceding such call.

ARTICLE 11. COUNTY AUDITOR.

969. How appointed. Whenever the county commissioners of any county within the state of South Dakota in which the office of county auditor does not now exist, shall declare by resolution at any regular meeting that a county auditor is necessary for the proper and expeditious dispatch of public business in their respective county, said commissioners, together with the county judge and treasurer of their county, may appoint a legally qualified person county auditor, who shall hold and discharge the duties of such office until the first Monday of March after the first general election next succeeding the time of his appointment, and until his successor is elected and qualified; provided, that if a majority of the electors of any county, as evidenced by the vote cast at the last preceding election, shall present a petition remonstrating against the creation of the office of county auditor, to the board of com-

missioners of such county, the office shall not be created for one year thereafter; and provided, further, that no such appointments shall be made on the first day of the meeting of the board. [C. L. 646.]

970. When elected. [Ch. 130, '89.] At the next general election after the appointment of a county auditor as provided by section six hundred and forty-six, there shall be elected in such county a county auditor, who shall hold his office for two years from the first Monday in March succeeding his election, and until his successor is elected and qualified. [C. L. 647.]

971. bond. Each county auditor previous to entering upon the discharge of the duties of his office shall qualify by giving a bond to the state of South Dakota, with two or more sureties to be approved by the board of county commissioners, in such penal sum, not less than two thousand dollars nor more than twenty thousand dollars, as the said commissioners require, conditioned for the faithful performance of the duties of his office, and shall take and subscribe the oath required by law to be endorsed upon said bond, which bond so endorsed shall be filed and recorded in the office of the register of deeds of such county. [C. L. 648.]

972. Duties. The county auditor shall by virtue of his office be clerk of the board of county commissioners of his county and keep an accurate record of their official proceedings, and carefully preserve all of the documents, books, records, maps and other papers required to be deposited or kept in his office, and prepare a financial statement of the county annually unless otherwise ordered by the board of county commissioners, and carefully do and perform all other acts and duties which may now or hereafter be required to be done or performed by the county clerks of the counties of the state of South Dakota. [C. L. 649.]

973. Account current kept with treasurer. He shall keep an accurate account current with the treasurer of his county, and when any person shall deposit with the auditor any receipt given by the treasurer for money paid into the treasury, the auditor shall file such receipt in his office and charge the treasurer with the amount thereof. [C. L. 650.]

974. Deliver moneys and records to successor. On going out of office he shall deliver up to his successor in office all the moneys, books, records, documents, maps, papers, vouchers and other property in his hands belonging to the county, and in case of the death of any county auditor his personal representatives shall in like manner deliver up all such

moneys, books, records, maps, documents and other property. [C. L. 651.]

975. Attest claims against the county. In all counties where the office of county auditor is created as provided by this act, no claim against the county shall be paid otherwise than upon the allowance of the county commissioners upon the warrant of the chairman of the board, attested by the county auditor, except it is authorized to be fixed by some other person or tribunal, in which case the sum shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the same; provided, that no public money shall be disbursed by the county commissioners or any of them, but the same shall be disbursed by the county treasurer upon the warrant of the chairman of the board of county commissioners, attested by the county auditor, specifying the name of the party entitled to the same, on what account and upon whose allowance, if not fixed by law; and all such orders shall be progressively numbered, and the numbers, date and amount of each, and the name of the person to whom payable, and the purpose for which drawn, shall at the time of issuing the same be entered in a book kept by the auditor for that purpose. [C. L. 652.]

976. May appoint deputies. County auditors are authorized to appoint deputy auditors by a certificate in writing, who shall before entering upon the duties of their office take and subscribe the oath required, which oath shall be endorsed on the certificate of appointment and filed in the office of the register of deeds. Such deputies are authorized to sign all papers and do all other things which the auditors themselves may do. The county auditors shall be responsible for the acts of their deputies, and may revoke their appointment at any time. They shall require bonds of their deputies in such amounts and with such sureties as they may deem proper. [C. L. 653.]

977. Vacancy, how filled. When from any cause a vacancy occurs in the office of county auditor, the same shall be filled in the manner prescribed by law for filling vacancies in other county offices. [C. L. 654.]

978. Action against auditor. An action may be brought against the county auditor and his sureties in the name of the state of South Dakota, and for its use, or for the use of any county or person injured by the misconduct in office of the auditor, or by the omission of any duty required of him by law. [C. L. 655.]

979. Liable to county commissioners. If any county auditor fails to make settlement or pay over all moneys with which he stands charged at the time and in the manner prescribed by law, or misapplies any

money which comes into his possession in the discharge of his official duties, the county commissioners shall commence action against such auditor and his sureties in the circuit court of said county or other court of competent jurisdiction, and he shall be proceeded against as now provided by law for proceeding against other county officers. In case of suspension under the provisions of this section, such auditor if restored to office shall not be deprived of his salary during the time of suspension, and his reasonable expenses of his defense upon such hearing shall be paid by the county. If upon trial of such action such auditor is adjudged guilty of any neglect of duty the office shall be deemed to be vacant. [C. L. 656.]

980. Who not eligible. No county commissioner, county judge, register of deeds, or county treasurer shall be eligible to the office of county auditor. [C. L. 657.]

981. County clerk becomes auditor, when. In all counties where the office of county auditor is now provided by law, is shall continue in force under this act, and the county clerk, where distinct from the register of deeds, shall become county auditor under this act. [C. L. 658.]

SALARIES OF REGISTERS AND AUDITORS.

982. Regulation of salaries. [Ch. 47, '97.] § 1. The salaries of registers of deeds and county auditors shall be regulated by the value of the property in their respective counties, as fixed by the state board of equalization for the preceding year, as follows: They shall be entitled to receive five (5) mills on each dollar of the first one hundred thousand dollars (\$100,000); one (1) mill on each dollar of all sums in excess of such last named sum and less than five hundred thousand dollars (\$500,000); one-quarter ($\frac{1}{4}$) of one (1) mill on each dollar of all amounts in excess of said last named sum and less than one million five hundred thousand dollars (\$1,500,000) and one twenty-fifth (1-25) of one mill on each dollar of all amounts in excess of said last named sum; provided, that in counties having an assessed valuation of three hundred thousand dollars (\$300,000) or less the salaries of registers of deeds and county auditors shall not exceed four hundred dollars (\$400) and such salaries shall not in any county exceed one thousand two hundred dollars (\$1,200) which salaries shall be paid quarterly by warrants on the special salary fund or the county general fund.

983. Deputies. [Ch. 47, '97.] § 2. If in the judgment of the board of county commissioners of any county, it shall be deemed necessary for the prompt and accurate dispatch of business in the office of the register

of deeds or county auditor that deputies or clerks be employed therein, they shall by resolution fix the number of clerks to be employed and the compensation which they shall receive, which compensation shall be paid monthly from the special salary fund or the county general fund by warrant; provided, that the officer in whose office such deputies or clerks are to be employed shall have the sole power of appointing the same and removing them at pleasure; provided further, that the total amount paid to the register of deeds for salary and clerk hire shall not exceed the amount of fees collected by such officer as provided by law; provided also, this act shall not affect the salaries of registers of deeds and county auditors elected at the general election held November third, eighteen hundred ninety-six.

ARTICLE 12. SHERIFF.

984. General duties. The sheriff shall keep and preserve the peace within his county, for which purpose he is empowered to call to his aid such persons, or the power of his county, as he may deem necessary. He must also pursue and apprehend all felons; and must execute all writs, warrants, and other process from the circuit court, or from a justice of the peace, which shall be directed to him by legal authority. He shall attend at the circuit court, and the sessions of the board of county commissioners when required by the latter to attend. [C. L. 661.]

985. Post election notices. He shall serve or post up all notices he may receive from the county clerk or the board of county commissioners, give notice of special and general elections, and shall keep his office at the county seat. [C. L. 662.]

986. Two terms. [Ch. 103, '89.] § 1. That no treasurer or sheriff of any county in this state shall be eligible for election to said offices for more than two successive terms of two years each.

(See constitution.)

ARTICLE 13. CORONERS.

987. Succeeds sheriff, when. When there shall be no sheriff or deputy sheriff in any organized county it shall be the duty of the coroner in such county to exercise all the powers and duties of that office until the same shall be filled as provided by law; and when the sheriff shall be committed to jail or otherwise disqualified the coroner shall be the keeper of the jail and perform the duties of sheriff during the continuance thereof. When the sheriff is sued the coroner shall serve the papers on him, and his return on all papers served by him shall

have the same credit as the sheriff's return; and he shall receive the same fees as the sheriff for like services. [C. L. 663.]

988. Hold inquest, when. The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means. When he has notice of the dead body of a person supposed to have died by unlawful means, found or being in his county, he is required to issue his warrant to the sheriff or any constable of his county, requiring him to summon forthwith three electors having the qualifications of jurors of the county to appear before the coroner at a time and place named in the warrant, or when the services of such sheriff or constable cannot be conveniently procured then the coroner may summon said electors from the bystanders. [C. L. 664.]

989. Form of warrant for jurors. That warrant may be in substance as follows:

STATE OF SOUTH DAKOTA, } ss.
County,

To the sheriff or any constable of said county: In the name of the people of the State of South Dakota, you are hereby required to summon forthwith three electors having the qualifications of jurors, of your county, to appear before me at (name the place), at (name the day and hour, or say forthwith), then and there to hold an inquest on the dead body of, there lying, and find by what means he died.

Witness my hand this.....day of....., 18..

A. B., Coroner of County.

[C. L. 665.]

990. Completing jury — oath. If any juror fails to appear the coroner shall cause the proper number to be summoned and returned from the bystanders, and immediately proceed to impanel them and administer the following oath, in substance:

You do solemnly swear (or affirm) that you will diligently inquire, and true presentment make when, how and by what means the person whose body here lies dead came to his death, according to your knowledge and the evidence given you.

[C. L. 666.]

991. Witnesses' contempts. The coroner may issue subpoenas within his county for witnesses, returnable forthwith or at such time and place as he shall direct, and witnesses shall be allowed the same fees as in cases before a justice of the peace, and the coroner has the same authority to enforce attendance of witnesses, and to punish them and jurors for contempt in disobeying his process, as a justice of the peace has when his process issues in behalf of the state. [C. L. 667.]

992. Oath to witness. An oath shall be administered to the witnesses in substance as follows:

You do solemnly swear that the testimony which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth So help you God.

[C. L. 668.]

993. Testimony subscribed. The testimony shall be reduced to writing under the coroner's order, and be subscribed by the witnesses. [C. L. 669.]

994. Return by jury. The jurors having inspected the body, heard the testimony and made all needful inquiries, shall return to the coroner their inquisition in writing under their hands, in substance as follows, and stating the matters in the following form suggested, as far as found:

STATE OF SOUTH DAKOTA, }
..... County. } ss.

An inquisition holden at.....in.....county, State aforesaid, on the.....day ofA. D. 18., before coroner of said county, upon the body of(or person unknown) there lying dead, by the jurors whose names are hereto subscribed. The said jurors upon their oaths do say (her estate when, how, by what person, means, weapon or accident, he came to his death, and whether feloniously).

In testimony whereof the said jurors have hereunto set their hands, the day and year aforesaid (Which shall be attested by the coroner.)

[C. L. 670.]

995. Name not disclosed. If the inquisition find that a crime has been committed on the deceased, and name the person whom the jury believe has committed it, the inquest shall not be made public until after the arrest directed in the next section. [C. L. 671.]

996. Order arrest or issue warrant. If the person charged be present, the coroner may order his arrest by an officer or any other person present, and shall then make a warrant requiring the officer or other person to take him before a justice of the peace. If the person charged be not present, and the coroner believes he can be taken, the coroner may issue a warrant to the sheriff and constables of the county, requiring them to arrest the person and take him before a justice of the peace. [C. L. 672.]

997. Warrant returnable. The warrant of a coroner in the above case shall be of equal authority with that of a justice of the peace, and when the person charged is brought before the justice the same proceedings shall be had as in other cases under complaint, and he shall be dealt with as a person under a complaint in the usual form in criminal cases. [C. L. 673.]

998. Warrant recite verdict. The warrant of the coroner shall recite substantially the transactions before him, and the verdict of the jury of inquest leading to the arrest, and such warrant shall be sufficient foundation for the proceedings of the justice instead of a complaint. [C. L. 674.]

999. Coroner's return. The coroner shall then return to the circuit court the inquisition, the written evidence, and a list of the witnesses who testified material matter. [C. L. 675.]

1000. Disposition of body — expenses. The coroner shall cause the body of a deceased person which he is called to view to be delivered to his friends, if any there be; but if not, he shall cause him to be decently buried and the expenses to be paid from any property found with his body; or, if there be none, from the county treasury, by certifying an account of the expenses, which being presented to the board of county commissioners shall be allowed by them if deemed reasonable, and paid as other claims on the county. [C. L. 676.]

1001. Justice may act as coroner, when. When there is no coroner, and in case of his absence or inability to act, any justice of the peace of the same county is authorized to perform the duties of coroner in relation to dead bodies, and in such case he may cause the person charged to be brought before himself by his warrant, and may proceed with him as a justice of the peace. [C. L. 677.]

1002. Physicians summoned. In the above inquisition by a coroner, when he or the jury deem it requisite, he may summon one or more physicians or surgeons to make a scientific examination, and shall allow in such case a reasonable compensation instead of witness fees. [C. L. 678.]

1003. Disposition of property on body. 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. [C. L. 679.]

1004. Duty of county treasurer. 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. [C. L. 680.]

1005. Money, when and how paid. 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. [C. L. 681.]

1006. Statement by coroner. Before auditing and allowing the account of the coroner, the board of county commissioners 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. [C. L. 682.]

ARTICLE 14. COUNTY ASSESSOR.

1007. Duties. The assessor shall perform all and singular the acts and duties which now are or may be hereafter prescribed by law for assessors to perform. [C. L. 683.]

1008. Report acreage of timber. All assessors within this state are authorized and it is hereby made their duty to determine and report each year the acreage of timber within their respective districts. Such report shall indicate separately the acreage of natural and cultivated or planted forests, averaging four feet or over in height, and shall also specify the kind of trees. Such data shall be taken and reported by such assessor without extra salary or charge. [C. L. 684.]

COUNTY EXAMINER.

1009. Appointment, how made. [Ch. 56, '95.] § 1. The board of county commissioners in the several counties of the state of South Dakota, may within a reasonable time after the passage and approval of this act, and thereafter at their first annual meeting in January, appoint a suitable person to be known as the county examiner, whose duty it shall be to at least once in each year, and at any other time, upon the petition signed by not less than thirty per cent. of the legal voters of any township, make a full and thorough examination of the books, accounts and funds of each township treasurer in his county. He shall have power to ascertain the amount of funds, if any, on deposit in any and all banks to the credit of any such township treasurer, and any and all bank officers are hereby instructed under penalty of prosecution to furnish to such county examiner such information as he may require, to enable him to ascertain the exact condition of all accounts of such township treasurers within his county.

1010. Duty of township treasurers. [Ch. 56, '95.] § 2. Should any township treasurer in any county within the state refuse or neglect to turn over to such county examiner all books, accounts or other documents of evidence to aid him in making such examination, the board of township supervisors in such township shall have power to remove such officer and to appoint a suitable person in his stead.

1011. Oath and bond. [Ch. 56, '95.] § 3. The county examiner shall, prior to the entering upon the duties of his office, take the usual oath of office and give a good and sufficient bond, to be approved by the board of county commissioners, in the penal sum of not less than five hundred dollars, for the faithful performance of his duty.

1012. Examiner to file statement — fees. [Ch. 56, '95.] § 4. The county examiner shall file with the county auditor a statement of the condition of the accounts of all township treasurers so examined, whereupon the county auditor shall issue to the county examiner a warrant on the county treasurer for the amount of five (5) dollars for each examination, which shall be in full compensation for such services, and the said warrant shall be paid by the county treasurer out of the general fund, and shall be charged to the township so examined.

1013. Duty of township supervisors in case of defalcation. [Ch. 56, '95.] § 5. In case any deficiency is found by the county examiner in the books, accounts or funds of any township treasurer so examined, the county examiner shall notify the board of township supervisors of the township where such deficit is found, and the board of supervisors shall have power to remove such treasurer and to appoint a successor who shall fill out the unexpired term of his office, and they shall proceed to collect from said treasurer or his bondsmen, or both, the amount of such deficit, and criminal action may be commenced against such treasurer, as in like cases for similar offenses against public officers, and in case of conviction he may be fined not less than fifty nor more than five hundred (500) dollars, or may be imprisoned in the county jail or penitentiary for a period of not less than thirty days nor more than one year, in the discretion of the court.

ARTICLE 15. MISCELLANEOUS PROVISIONS.

1014. Record of state's attorney and clerk of courts. [Ch. 60, '89.] § 1. It shall be the duty of the clerk of the circuit court and state's attorney to each keep in a separate book, to be provided by the county for that purpose, a complete record of all fines, forfeitures, penalties and costs in each and every criminal action, pending in the circuit court in the county of which he is an officer, and shall also record therein the date and the amount of each payment thereof.

1015. Duty of clerk. [Ch. 60, '89.] § 2. The clerk of the circuit court shall immediately upon receipt of payment of any such fines, forfeitures, penalties or costs pay the same into the treasury of his

county taking a receipt therefor; and no bills for fees in any case shall be allowed by the board of county commissioners, until the clerk shall have first filed with his bill the receipt from the county treasurer, taken as aforesaid or until he shall state under oath that the costs have not been paid.

1016. Duty of state's attorney. [Ch. 60, '89.] § 3. The state's attorney shall on the first Monday of each and every month, make out and file with the county clerk or auditor of the county, a complete list of all criminal cases in the circuit court, wherein fines, forfeitures, penalties and costs have been paid, and the amount so paid.

1017. Authorized to commence actions on behalf of county. [Ch. 115, '97.] § 1. The state's attorneys of the counties within this state are hereby authorized and empowered to commence and prosecute actions in the name of and on behalf of the respective counties within and for which they are respectively such officers as hereinafter provided.

1018. To make complaint — when. [Ch. 115, '97.] § 2. Whenever, in the opinion of the state's attorney of any county in this state the commencement and prosecution of any action is necessary to protect the interest of such county in any matter or to recover any money due such county from any person or persons, he may present to the judge of the circuit court of the circuit in which such county is situated a summons and complaint in such matter and ask leave of the judge to commence such action.

1019. Judge to indorse. [Ch. 115, '97.] § 3. If it shall appear to such judge that the interest of such county presumable require the prosecution of such action he shall make an indorsement to that effect on the summons, and thereupon the said state's attorney shall have power to commence and prosecute such action.

1020. To prosecute county commissioners. [Ch. 116, '97.] § 1. That it shall be the duty of the state's attorney of any county of this state to begin and prosecute a civil action or civil actions on behalf of the county against the county commissioners of the county, or any one or more of them for malfeasance in office, misappropriation of county funds or for any other cause whenever there is a reasonable cause therefor and he shall be requested so to do by written petition signed by fifteen resident taxpayers of the county for which he is state's attorney.

1021. Purchasing public supplies. [Ch. 130, '99.] § 1. All goods and supplies for state institutions and state and county officers shall as far as practicable, with due regard for economy, be purchased from regularly established business houses in this state; and all supplies for county institutions and county officers shall, as far as practicable, with due regard for economy, be purchased within the county ordering the same.

1021a. Penalty. [Ch. 130, '99.] § 2. Any person who wilfully violates the provisions of this act shall be guilty of a misdemeanor.

COUNTY COURT.

1022. Court of record. [Ch. 78, '90.] § 1. That there shall be in each of the counties of this state, now organized, or which may hereafter be created and organized, a court of record to be styled the county court of county; said court shall have a seal.

1023. Election of judge. [Ch. 78, '90.] § 2. The county judge in each county shall be elected on the Tuesday after the first Monday in November in the year eighteen hundred and ninety, and every two years thereafter, and shall enter upon the duties of his office on the first Monday in January after his election, and shall hold his office for two years and until his successor is elected and qualified.

1024. Qualification of judge. [Ch. 78, '90.] § 3. The county judge shall, before entering upon the duties of his office, take and subscribe and file with the secretary of state the following oath: "I do solemnly swear, or affirm, as the case may be, that I will support the constitution of the United States and the constitution of the state of South Dakota, and that I will faithfully discharge the duties of the office of county judge according to the best of my ability."

1025. Power and authority. [Ch. 78, '90.] § 8. They shall have the power and authority to issue all writs necessary to carry into effect their judgments, decrees and orders.

1026. Jurisdiction. [Ch. 78, '90.] § 10. They shall have jurisdiction to grant new trials, affirm, modify or set aside judgments in actions tried in such courts upon a bill of exceptions or case made.

1027. Appeals. [Ch. 78, '90.] § 11. An appeal may be taken to the circuit court from a judgment, decree or order of the county court in all those cases enumerated in section three hundred and twelve of the probate code and the procedure upon such appeals shall be the same as is provided for in article two, of the probate code; provided, however, that nothing herein shall be construed to prevent an appeal being taken

to the supreme court from the decision of the circuit court in such cases upon questions of law alone.

1028. Appeals. [Ch. 78, '90.] § 12. Appeals from, and writs of error to the county court shall be allowed to the supreme court from all judgments, orders and decrees of said county court, except in cases enumerated in section eleven, hereof, and shall be governed by the law of appeals as provided in the code of civil procedure applicable to appeals from the circuit courts in like cases.

1029. Same as circuit courts. [Ch. 78, '90.] § 13. The process, pleadings, practice and modes of procedure in the county courts shall be the same as provided for in the circuit courts of this state by the code of civil procedure, or as may hereafter be provided for by law, and the process, orders, judgments and decrees of such county courts shall have the same forms, force, lien and effect as in the circuit court, and the clerks of said county courts shall have charge and collect like fees in the county courts as in the circuit courts for similar services.

1030. Prosecution of offenses. [Ch. 78, '90.] § 14. All offenses of which the county court shall have jurisdiction shall be prosecuted by information of the state's attorney or attorney general, and every information shall set forth the offense with reasonable certainty, substantially as required in an indictment, and may be filed either in term time or in vacation, and the proceedings thereon shall be the same as near as may be, as upon indictment in the circuit court, except as herein otherwise provided. Nothing in this act shall be construed to affect the jurisdiction of justices of the peace.

1031. Bail. [Ch. 78, '90.] § 15. The court in term time or the judge in vacation, shall fix the amount of bail to be required of the accused, and the clerk shall endorse the same upon the warrant, except that when the warrant is issued in term time, the same may be made returnable forthwith when it shall not be necessary to fix the amount of bail until the accused is brought into court.

1032. Plea. [Ch. 78, '90.] § 16. The court may receive the plea of guilty and pass judgment, or, if the accused will waive a jury and be tried by the court without a jury, the court may, upon notice being first given to the state's attorney, try the cause and pass judgment as well at a probate as a law term of said court.

1033. When judge disqualified. [Ch. 78, '90.] § 17. Whenever the county judge of any county is a party to or personally interested in

any proceedings in any probate matter therein or connected by blood or affinity to any person so interested nearer than the fourth degree, or when he is named as a legatee or devisee, or executor or trustee in a will or is a witness thereto, such fact or facts shall be entered upon the records of such court and certified to the circuit court of such county; provided, that in case the judge is interested only as a creditor, no change need be made except in relation to his claim.

1034. Certificate to circuit court. [Ch. 78, '90.] § 18. Upon the filing of a copy of such certificate in the office of the clerk of the circuit court, such circuit court shall have full and complete jurisdiction in all matters pertaining to such estate and may make all orders and take all proceedings therein, which might have been made or taken in the county court, if the judge thereof had not been interested or a party as aforesaid.

1035. Transfer of cases. [Ch. 78, '90.] § 19. In all cases transferred to the circuit court under the two preceding sections, the clerk of such court shall have the same authority to grant citations, and letters testamentary and of administration in vacation as is given to clerks of the county courts and such authority shall be exercised by him as clerk of the circuit court.

1036. Trials before a jury. [Ch. 78, '90.] § 21. Unless the court shall otherwise order, the jury for the law term of the county court shall be drawn and summoned in the manner as is now or may hereafter be provided by law for the drawing and summoning juries for the terms of the circuit court. Where a jury is not summoned as above provided, it shall be the duty of said court on the first day of each term thereof to ascertain whether a jury shall be required; if a jury shall be demanded by either party to any suit pending, or by any defendant, or the state's attorney, in any criminal action, the court shall thereupon set such case or cases for trial, and direct the clerk of said court to issue a venire for twelve competent jurors, and deliver the same to the sheriff, who shall summon such jurors from the body of the county to be and appear before said court at the term set for the return of said venire; and if by reason of non-attendance, challenge or otherwise, said jury shall not be full, the panel shall be filled by talesmen. Said court shall have the same power to compel the attendance of jurors and witnesses as has the circuit court and shall be governed by the same rules in empanelling the jury, and the court may retain such jury for all the jury trials of said term; provided, that there shall be taxed as a part of the costs of each civil case tried by a jury the sum of ten dollars as a jury

fee, which shall be paid into the county treasury and placed to the credit of the general fund of the county. The per diem and mileage of said jurors shall be the same as they are for similar services in the circuit court, to be paid out of the county treasury upon the certificate of the county clerk or county auditor; provided, that in case the sheriff, coroner or bailiff be interested in any jury cases pending, or in case any party interested or any attorney may object to any sheriff, coroner or bailiff selecting the jury, if the court shall think such objection reasonable, the court shall appoint an impartial bailiff to summon such jury.

1037. Terms of court. [Ch. 78, '90.] § 22. The terms of the county court for all matters relating to probate jurisdiction shall be held as provided for in section ninety, of chapter twenty-one, of the political code; and for the transaction of all other business within their jurisdiction the county courts shall annually hold two terms of court at the county seat of their respective counties, in the court house, or in such rooms as the county may provide, on the first Tuesdays in January and July; provided, that if in any county the terms of the circuit court are fixed for such months, or a term of the circuit court is being held in any county at the time fixed for a term of the county court, or if for any reason a term of the county court cannot be held at the time fixed herein, then the county judge shall call a term of the county court within three months after the adjournment of the term of the circuit court; and said courts shall always be open within said counties for the purpose of hearing and determining all matters relating to probate jurisdiction, all actions, special proceedings, motions and applications, of whatever kind or character, and whether of a civil or criminal nature, arising under the laws of the state, and of which the county courts have jurisdiction, original or appellate.

1038. Cause may be tried before some other judge. [Ch. 78, '90.] § 20. In any civil or criminal cause of which this court has jurisdiction, whenever at any time before the case is called for trial it shall appear to the satisfaction of the court by affidavit, or if the court should so order, upon other testimony, that a fair and impartial trial cannot be had in such court by reason of the bias or prejudice of the judge or otherwise, the court shall call the judge of the county court of any adjoining county to try such cause.

There must be a fair showing made strong enough to overcome the presumption in favor of the integrity of the trial court. *State v. Chapman et al.*, 1 S. D. 414; *State v. Rodway*, 1 S. D. 575; 47 N. W. Rep. 1061.

1039. Change, how made. [Ch. 49, '91.] § 1. That in counties of less than seven thousand inhabitants, in all actions, civil and criminal, where the defendant before notice of trial is served, makes and files an affidavit that he or she believes that a fair and impartial trial cannot be had before the judge of such county court, by reason of the interest, prejudice or bias of such judge, the judge of such court must immediately order the case transferred to the circuit court of said county, and after such order shall have been made the clerk of said county court must file all the papers and pleadings in such action in the circuit court, and said circuit court to which the action is transferred shall have the same jurisdiction over it as if it had commenced in said court.

1040. Court always open — terms. The court shall be always open for the transaction of probate business; and the judge thereof shall especially attend his office and hold terms of the county court beginning on the first Mondays of January, March, May, July, September and November of each year, and continuing so long as shall be necessary. [C. L. 686.]

1041. Office, furniture, records. The judge of the county court shall keep his office at the county seat in such room as the county may provide, and his office shall be kept open at reasonable hours. He shall safely keep all papers, books and records of his office or relating to any case or business of the county court or before him as judge thereof, and receive and pay out according to law any money which by law may be payable to him. The county shall provide such tables, desks, cases for books and papers and all necessary books and papers and books of record and other property or furniture required for the office. [C. L. 687.]

1042. Judge not to be counsel, when. A judge of the county court shall not be counsel or attorney in any civil action for or against any executor, administrator, guardian, trustee, minor or other person over whom or whose accounts he has or by law would have jurisdiction, whether such action relate to the business of the estate or not. [C. L. 688.]

JUDGMENTS.

1043. Judgments to be docketed — duty of clerk of courts. [Ch. 127, '95.] § 1. That in every county in this state in which the county court has been by law deprived of jurisdiction in civil actions, and in which judgments, directing in whole or part, the payment of money have been rendered and docketed, it shall be the duty of the clerk of the

circuit court of such county or of the judicial subdivision in which such county is located, forthwith to file in the office of the clerk of the circuit court of such county or subdivision a transcript of the docket of each and every of such judgment and docket the same in the judgment docket therein; and from the time of such docket thereof by him, such judgment shall become a judgment of the circuit court of said county or subdivision, as the case may be, and may be enforced as other judgments of the circuit court.

1044. Clerk of court to make transcripts. [Ch. 127, '95.] § 2. That whenever any judgment, directing in whole or in part, the payment of money, has been or may hereafter be rendered in any civil action in any county court in this state, and docketed therein, the clerk of said court or the clerk of the circuit court of any county in which the county court has not jurisdiction in civil actions, or of the judicial subdivision in which such county is situated, shall upon application therefor and the payment of the same fees prescribed by law for transcripts of the docket of judgments in the circuit court, furnish to such person a transcript of the original docket of such judgment, or in cases of transcripts, docketed as aforesaid in the office of the clerk of the circuit court, a transcript of such docket, and the same may thereupon be filed and docketed in any county or judicial subdivision in the state in the same manner as is now provided by law for the docketing of judgments in the circuit court, and from the time of such docketing such judgments shall be a lien upon all the real property in the county or judicial subdivision, where so docketed, of every person against whom any such judgment may be rendered and which he may have at the time of the docketing thereof in said county or subdivision, or which he shall acquire at any time thereafter for the same time and with the like effect as is now provided by law for judgments rendered in the circuit court.

1045. Transfer of actions. [Ch. 127, '95.] § 3. That all civil actions which were pending in any county court of this state when chapter sixty-four of the session laws of eighteen hundred and ninety-three became operative, which courts by the provisions of said chapter were deprived of said jurisdiction are hereby transferred to the circuit court of such county or subdivision, and the clerk of such circuit court shall receive and enter said actions in said circuit court in the same manner as if said action had been originally commenced therein.

1046. Actions may be remanded from supreme to circuit courts. [Ch. 127, '95.] § 4. All actions now pending in the supreme court on ap-

peal from or writ of error to any county court which has been deprived by law of jurisdiction in civil actions shall upon determination thereof by the supreme court, be remanded to the circuit court of the county or judicial subdivision in which such county court was held, and all subsequent proceedings in such action shall be had in the circuit court in the same manner as if said action had been originally commenced in the circuit court.

JURISDICTION OF COUNTY COURT.

1047. Jurisdiction in counties of over twenty thousand population. [Ch. 64, '93.] § 1. The county court of each county having a population of twenty thousand or over, shall have jurisdiction in all civil actions cognizable by a justice of the peace, except actions for the forcible entry or detainer of real property in all cases where the debt, damage, claim or value of the property involved shall not exceed one thousand dollars, and criminal jurisdiction in all cases of misdemeanor; and exclusive original jurisdiction in all matters of probate, guardianship and settlement of estates of deceased persons.

1048. Jurisdiction in counties of less than twenty thousand population. [Ch. 64, '93.] § 2. In all counties having a population of less than twenty thousand the county court shall have exclusive original jurisdiction in all matters of probate, guardianship and settlement of estates of deceased persons, and no other jurisdiction whatever

Jurisdiction of county court is limited to subject-matter of the action over which justice of the peace has jurisdiction; also jurisdiction of justices over the parties to the action. *Bennett v. Johnson*, 4 S. D. 387; 57 N. W. Rep. 66.

No jurisdiction is acquired by the transfer from one county court to the other. *Id.*

1049. Salary of judges. [Ch. 64, '93.] § 3. The salary of the judges of the several county courts shall be as follows: In all counties having less than five thousand population, two hundred dollars per annum. In counties having not less than five thousand nor more than seven thousand five hundred population, three hundred dollars per annum. In counties having seven thousand five hundred and less than ten thousand population, four hundred dollars per annum. In counties having ten thousand and less than fifteen thousand population, five hundred dollars per annum. In counties having fifteen thousand and less than twenty thousand population, six hundred dollars per annum. In counties having more than twenty thousand population, two thousand dollars per annum. [See § 1052.]

1050. Population determined by county auditor. [Ch. 78, '90.]

§ 24. It shall be the duty of the county auditor or county clerk of their respective counties, within thirty days after the passage hereof, and hereafter, on or before the first day of January in each year, to file in the office of the clerk of this court his certificate, under seal, of the population of his county, which shall be conclusive of such population, to be determined in the following manner: He shall take the total vote cast for governor in his county at the last general election and multiply the same by five, and the product thereof shall be the population of such county for the purposes herein named

1051. Stenographers. [Ch. 78, '90.] § 25. The laws relating to the employment and pay of stenographers in the circuit court shall apply to this court in all counties where the population is fifteen thousand or more.

1052. Salary of judge and clerk. [Ch. 53, '97.] § 1. That the salary of judges of county courts in counties having a population of twenty thousand (20,000) or more shall not exceed eighteen hundred dollars (\$1,800) a year and the salary of clerks of courts in counties having the population above stated, shall not exceed twelve hundred dollars (\$1,200) a year; provided this act shall not affect the salaries of judges and clerks of courts elected at the general election held November third, eighteen hundred and ninety-six. [See § 1049.]

ARTICLE 16. SURVEYOR.

1053. Duties. The county surveyor shall make in a good and professional manner all surveys of land within his county which he may be called upon by the owner thereof or his representative, or directed by the district or probate courts or the board of county commissioners, to make; and also all lands, tracts or lots owned by the county, and public roads, when so directed by said board; and his surveys shall be held as presumptively correct. [C. L. 689.]

1054. Record of notes and plats. He shall transcribe the field notes and plats of such surveys into convenient and substantial record books to be furnished by the county, when the board of commissioners shall deem it advisable, and said records shall be entered in an orderly manner, easy of reference, and shall be delivered to his successor in office. They may be kept in the office of the county clerk, and said record shall be competent evidence in all courts of the facts therein set forth. [C. L. 690.]

1055. Resurvey and subdivision. The resurvey and subdivision of lands by all surveyors shall be according to the laws of the United States, and the instructions issued by the officers thereof in charge of the public land surveys, in all respects; and in the subdivision of fractional sections, bounded on any side by a meandered lake or river, or the boundary of any reservation or irregular survey, the subdivision lines running toward and closing upon the same shall be run at courses in all points intermediate and equidistant, as near as may be, between the like section lines established by the original survey. [C. L. 691.]

1056. Sworn chainmen in disputed cases. Whenever the survey made is of lines and monuments in dispute between parties, or by order of the district or probate courts, the chainmen must be disinterested persons, approved and sworn by the surveyor to measure justly and impartially to the best of their skill and ability. [C. L. 692.]

1057. Fullness and accuracy of notes and plats. The record of the field notes and plats shall show distinctly of what piece of land it is a survey, at whose request it was made, what owners were notified and present, the date of the survey, the names of the chainmen, and that they were approved and sworn by the surveyor, when so required by law. The courses shall be taken according to the true meridian, and the variation of the magnetic needle therefrom shall be noted, and also when any material change therein shall occur. [C. L. 693.]

1058. Retracing lines to avoid errors. In retracing lines or making any survey he shall take care to observe and follow the boundaries and monuments as run and marked by the original survey, but shall not give undue weight to partial and doubtful evidences or appearances of monuments, the recognition of which shall require the presumption of marked errors in the original survey, and he shall note an exact description of such apparent monuments. [C. L. 694.]

1059. Pay of assistants. All necessary chainmen and other assistants must be paid for their services by the person for whom the survey is made, unless otherwise specially agreed. [C. L. 695.]

1060. Must file diploma or certificate of qualification. [Ch. 157, '93.]
§ 1. It shall be the duties of every county surveyor before entering upon the duties of his office, to file with the county auditor a surveyor's

diploma or certificate of qualification, for said office of county surveyor, and no person failing to do so, shall have the right to enter upon the duties of said office.

1061. Penalty of failure to file diploma. [Ch. 157, '93.] § 2. Any person qualifying for said office and performing the duties of said office, without having first complied with the foregoing section, shall be deemed guilty of a misdemeanor, and shall be fined not less than ten (10) nor more than fifty (50) dollars for each official act performed by him as such surveyor.

1062. Office of state surveyor created. [Ch. 157, '93.] § 3. For the purpose of this act there is hereby created the office of state surveyor.

1063. Governor to appoint — qualifications — bond of. [Ch. 157, '93.] § 4. The governor shall immediately upon the passage of this act, appoint a practical surveyor, who is also a civil engineer of at least ten (10) years experience in his profession, to be known as the state surveyor, and who shall hold his office for the term of two years or until his successor has been appointed and has qualified. He alone shall have the power to examine candidates and grant licenses to practice land surveying and persons holding such licenses shall be known as deputy state surveyors. The state surveyor shall before entering upon the duties of his office, give a bond for one thousand (1,000) dollars, in the usual manner, for the faithful performance of his duties. His successor shall be appointed from among the most efficient deputy state surveyors.

1064. Shall furnish instructions to county and other surveyors. [Ch. 157, '93.] § 5. As soon as possible after appointment and qualification the state surveyor shall prepare and issue a circular of directions for the general guidance of county and licensed surveyors in conducting and recording surveys and for the guidance of county surveyors in the examination and acceptance of plats and field notes filed in their office for record; and he shall whenever it may be deemed necessary, issue such additional instructions as may be desirable for the proper establishing and preservation of land lines and corners. Sufficient copies of such instructions shall be furnished to each county surveyor for distribution among the licensed surveyors of his county.

1065. Salary — examination of candidates, when and where held. [Ch. 157, '93.] § 6. The state surveyor shall be paid six dollars (\$6) per day and expenses for the necessary time given to his duties in travel-

ing, correspondence, examinations, granting certificates and other duties. There shall be four examinations of candidates for licensed surveyors held each year, viz.: One at Yankton commencing on the first Tuesday after the first Monday in April; one at Mitchell commencing on the first Tuesday after the first Monday in May; one at Huron commencing on the first Tuesday after the first Monday in June; one at Aberdeen commencing on the first Tuesday after the first Monday in July

1066. Fee for certificate. [Ch. 157, '93.] § 7. Any person on entering as a candidate for a certificate shall pay to the state surveyor the sum of fifteen dollars (\$15). If the candidate does not receive a certificate, the sum of five dollars shall be returned to him by the examiner upon a refusal to grant a certificate.

1067. Who eligible without examination. [Ch. 157, '93.] § 8. Any practical surveyor who shall present to the state surveyor testimonials satisfactory to him, certifying that the applicant has had ten (10) or more years experience and practice as a surveyor, shall, upon the payment of fifteen dollars (\$15), receive a regular certificate from the state surveyor as a deputy state surveyor without attending an examination.

1068. May appoint deputy — salary of. [Ch. 157, '93.] § 9. The state surveyor may appoint an efficient deputy state surveyor to conduct an examination in accordance with instructions furnished by him. For such services he shall receive the sum of five dollars (\$5) per day and the necessary expense for each and every day so engaged.

1069. Disposition of fees. [Ch. 157, '93.] § 10. An itemized statement of account of all expenses incurred and paid together with an itemized account of all moneys received by the state surveyor shall be rendered by him in duplicate to the state auditor and state treasurer at the close of each examination. The balance of money remaining, if any, after paying the specified expenses, shall at once be forwarded to the state treasurer by check or draft. If the expenses of the state surveyor after any session are greater than the amount of fees received, he shall include the shortage in his statement of amount due for personal services and it shall be allowed by the state auditor and treasurer, at the same time a sworn statement of the amount due him for personal services and expenses shall be forwarded to the state auditor, who shall upon receipt of the same, draw a warrant upon the state treasurer for the sum due the state surveyor, and the state treasurer upon the receipt from the state surveyor of whatever balance is shown by said statement of account, shall forward to the state surveyor the amount due him.

1070. Surveys and plats illegal, when. [Ch. 157, '93.] § 11. No survey of land or plat subdivision shall be legal after the first examination by the state surveyor held at each place designated in this act unless made by a licensed surveyor, and any stakes, corner or boundaries established by any other person can be destroyed by any licensed surveyor.

1071. Government survey corners not to be disturbed. [Ch. 157, '93.] § 12. No United States government survey corner, or any corner established by any licensed surveyor, shall be disturbed, removed or in any manner changed by any person or persons in the prosecution of any public or private work, under a penalty to the state of not less than twenty-five (25) dollars or more than one hundred dollars for each and every such offense. Any licensed surveyor (or road overseer having similar powers granted by law, can, when he deems it necessary, plant a new stake, stone or other mark or monument at any established corner, carefully noting the change and reporting the same to the county surveyor.

1072. Bond of licensed surveyor. [Ch. 157, '93.] § 13. Any licensed surveyor before entering on the discharge of the duties of his office, shall be sworn in the usual manner and give bonds in five hundred dollars (500) for the proper and faithful performance of his duties.

1073. Eligibility to office of county surveyor. [Ch. 157, '93.] § 14. No person can be eligible to the office of county surveyor, after the first examination held by the state surveyor, who does not hold at the time of his election, a certificate from the state surveyor as a licensed surveyor. The election of any person to that office, not holding a certificate shall cause a vacancy in that office. Such vacancy shall be filled by appointment from among the licensed surveyors, by the board of county commissioners.

1074. Present incumbents to be subject to the provisions of this act. [Ch. 157, '93.] § 15. All county surveyors in office at the time of the passage of this act, shall be considered as licensed surveyors and be subject to the same rules and regulations as regularly licensed surveyors until the termination of their respective terms of office unless removed for cause by the state surveyor.

1075. Fees of county surveyor. [Ch. 157, '93.] § 16. The fee of the county surveyor for examining, transcribing and recording all plats of sub-divisions of property into lots or blocks, as in cities, towns, cemeteries, etc., shall be five dollars (\$5) for each plat, to be paid by the surveyor presenting the same, and the fee for recording the field notes and plats of any land surveyed shall be one dollar (\$1) for each plat and ten cents (10c.) for each corner established in such survey.

1076. May administer oaths. [Ch. 157, '93.] § 17. Any licensed surveyor is hereby empowered to administer oaths to chainmen and assistants.

ARTICLE 17. SUPERINTENDENT OF SCHOOLS.

[For duties of superintendent of schools, see chapter 17, political code.]

ARTICLE 18. STATE'S ATTORNEY.

[For duties of state's attorney, see article 3, chapter 8, political code.]

ARTICLE 19. CLERK OF THE CIRCUIT COURT.

[For duties of clerk of the circuit court, see article 4, chapter 8, political code.]

ARTICLE 20. COUNTY JUSTICES OF THE PEACE AND CONSTABLES.

[For duties of county justices of the peace and constables, see justices' code. Section 715 of the compiled laws requires the election of these officers in counties having township organization, the same as in those without it.]

ARTICLE 21. COUNTY BONDS.

1077. Bonds, how issued. [Ch. 55, '99; ch. 51, '93.] § 1. Each and every county of the state is hereby authorized and empowered by and through its board of county commissioners when ordered by a majority vote of the electors voting thereon at a general or at a special election called for that purpose, to issue its negotiable bonds in the name of the county corporation for the sole purpose of funding the outstanding indebtedness which exists against said county. Provided, that no bonds shall be issued under the provisions of this act to pay, or fund any indebtedness except such as is represented by the legally issued county warrants or orders of said county issued since January 1, 1880, and prior to the passage and approval of this act, or such as is represented by the duly audited accounts or claims against said county which have been allowed since January 1, 1893, and prior to the approval of this act. Such bonds shall be in denominations of not less than one hundred (100) dollars nor more than one thousand (1,000) dollars; shall bear the date of their issue, shall be made payable to the purchaser or bearer, and shall be made payable in not less than five years, nor more than twenty years, from the date of their issue and may contain an option that they may be payable at any time after five years and bear interest at a rate not exceeding six per cent per annum, payable semi-annually with coupons attached for each interest payment, and shall not be sold for less than their par value. Provided, that in no case shall the amount of such bonds in the aggregate, including the then existing indebtedness, exceed five (5) per centum of the value of taxable property within such county, to be ascertained by the last assessment for county taxes previous to the issuing of such bonds, except that the warrants, or other evidences taken up by

said bonds shall not be considered or counted in arriving at the amount of the constitutional limit of indebtedness. The bonds and each coupon shall be signed by the chairman of the board of county commissioners and shall be attested by the county auditor. The seal of the county shall be affixed to each bond, but not to the coupons. Said bond shall be lithographed, printed or engrossed on good bond paper, and each bond shall state on its face that it is issued in accordance and in strict compliance with this act.

1078. How sold. Said bonds may be exchanged at not less than their par value for an equal amount of the orders or warrants permitted to be funded under the provisions of section six hundred and ninety-six, of the county issuing them; or said bonds may be sold by the board of county commissioners at not less than their par value, and the proceeds applied solely to the payment of such indebtedness. When such warrants are so taken up and paid by the issue of bonds as herein provided for, such warrants shall be marked "paid by bond No.," (giving number of bond), and shall be retained by the county treasurer until his settlement with the county commissioners, and shall then be carefully compared with the bond register, and after such comparison shall be placed in the custody of the county auditor or county clerk, and it shall be his duty to preserve the same. The county treasurer shall endorse upon each warrant so taken up and paid the amount of interest allowed thereon. [C. L. 697.]

1079. Tax for interest and sinking fund. The board of county commissioners shall each year levy upon the taxable property of the county a sufficient tax to pay the interest on said bonds as the same accrues, and a reasonable time before maturity a sufficient tax to provide a sinking fund for the payment of the bonds when they mature. [C. L. 698.]

1080. County treasurer to pay interest. When said bonds and the several coupons thereto attached mature, it shall be the duty of the county treasurer to pay the same on presentation, out of any funds in his hands applicable thereto, and shall cancel them when paid by writing or stamping across the face of each coupon or bond the words "cancelled by payment this day of" (inserting the date of payment). [C. L. 699.]

1081. Fees of treasurer. The county treasurer shall be allowed a commission of one-half of one per cent. on the par value of said bonds for receiving and disbursing all funds arising from the sale or exchange of said bonds, and the commission herein provided for shall be in lieu of all other commissions allowed him by law. [C. L. 700.]

1082. Registry of bonds. Before the bonds are delivered to the purchaser they shall be presented to the county treasurer, who shall register them in a book to be kept for that purpose, and known as the

bond register, in which register he shall enter the number of each bond, its date of maturity, amount, rate of interest, to whom and where payable. [C. L. 701.]

1083. How issued. No bonds in excess of twenty thousand dollars shall be issued by any one county under the provisions of this act until the issuance of the same is authorized by a majority vote of the qualified electors of such county at a special election to be called for that purpose by the board of county commissioners. Notice of such election shall be given in the manner provided by law for conducting special elections, and such notice shall state the amount of bonds to be issued, when payable and the rate of interest they are to bear. The voting shall be done by written or printed ballots, and all ballots deposited in favor of issuing bonds shall have thereon the words "for issuing bonds," and those opposed shall have thereon the words "against issuing bonds," and if a majority of all votes cast shall be in favor of issuing bonds the board of county commissioners shall forthwith proceed to issue the bonds in accordance with the vote and the provisions of this act. The election in all other respects shall be conducted in accordance with the law regulating general elections. [C. L. 702.]

1084. To be negotiable. Bonds issued in substantial conformity to this act shall in law be considered negotiable. [C. L. 703.]

FUNDING BONDS.

1085. Bonds, how issued. [Ch. 32, '91.] § 1. Each and every organized county of this state is hereby authorized and empowered by and through its board of county commissioners when in the judgment of said board it is deemed to be to the best interest of the county to issue its negotiable bonds in the name of the county corporation for the sole purpose of funding the outstanding bonded indebtedness existing against the county, that is due and payable, or is about to become due and payable, or whenever said indebtedness can be refunded at a lower rate of interest, or whenever judgments have been entered on any such bonds or interest coupons.

1086. Interest. [Ch. 32, '91.] § 2. The bonds issued under the provisions of this act shall be in denominations of not less than one hundred dollars nor more than one thousand dollars, shall bear the date of their issue; shall be made payable to the purchaser or bearer, and shall be made payable in not less than ten nor more than twenty years from their date, and bear interest at a rate not exceeding six and one-half (6½) per cent. per annum, and payable annually or semi-annually as may be agreed upon, with coupons attached for each interest payment. The bonds and

each coupon shall be signed by the chairman of the board of county commissioners, and shall be attested by the county clerk or auditor. The seal of the county shall be affixed to each bond but not to the coupons. Said bonds shall be engraved or lithographed on good bond paper, and each bond shall recite upon its face that it is issued under and pursuant to the provisions of this act, designating it by its title and date of approval or becoming a law. Said bonds may be made payable anywhere in the United States.

1087. Bonds in exchange for outstanding indebtedness. [Ch. 32, '91.]

§ 3. Said bonds may be exchanged at not less than par value for an equal amount of bonds permitted to be funded under the provisions of section one of this act, of the county issuing them or issued in discharge of said judgments, at the par value of said bonds, or said bonds may be sold by the board of county commissioners at not less than par value, and the proceeds applied solely to the payment of such indebtedness. When such bonds are so taken up by the issue of bonds as herein provided for such bonds shall be marked "Exchanged for bond No. (giving number of bond), and shall be retained by the county treasurer until his settlement with the county commissioners, and shall then be carefully compared with the bond register, and after such comparison shall be placed in the custody of the county auditor or county clerk, and it shall be his duty to preserve the same. When such judgments are discharged they shall be duly satisfied of record and a proper record thereof be made in the bond register.

1088. Tax. See § 2299a.

1089. County treasurer to pay. [Ch. 32, '91.] § 5. When said bonds and the several coupons thereto attached, mature it shall be the duty of the county treasurer to pay the same on presentation out of any funds in his hands applicable thereto, and shall cancel them, when paid, by writing or stamping across the face of each coupon or bond the words "cancelled by payment this day of" (inserting the day of payment). But if said bonds and coupons are made payable elsewhere than at the office of the county treasurer he shall forward such funds to the place of such payment so that they shall be paid at maturity in accordance with the terms thereof.

1090. Treasurer to keep bond register. [Ch. 32, '91.] § 6. Before the bonds are issued under the provisions of this act, they shall be presented to the county treasurer, who shall register them in a book to be

kept for that purpose; and known as the "bond register," in which register he shall enter the number of each bond, its date, date of maturity, amount, rate of interest, to whom and where payable, and he shall also keep a register of the bonds and judgments funded under the provisions of this act.

1091. What bonds negotiable. [Ch. 32, '91.] § 7. Bonds issued in substantial conformity to this act shall in law be considered negotiable.

CHAPTER 10. TOWNSHIP GOVERNMENT.

1092. County divided by commissioners. [Ch. 34, '90.] § 1. That the board of county commissioners of each county of this state shall lay off and divide the same into any number of civil townships that the convenience of the citizens may require, and accurately define the boundaries thereof, and may from time to time make such alternations [alterations] in the number, names and boundaries of such civil townships as they may deem proper, by advice of the people, as hereinafter provided for.

1093. Record of division. [Ch. 34, '90.] § 2. The description of the boundaries of such civil townships shall be entered at full length in the records of such boards, as also, all of the alterations, in such boundaries and all of new and additional civil townships which may hereafter be formed.

1094. Townships established prior to the provisions of this act taking effect. [Ch. 34, '90.] § 3. The civil townships now established shall remain as they are, subject to alterations or divisions as provided in this act.

1095. Limit. [Ch. 34, '90.] § 4. The limit of congressional townships to form or constitute a civil township may extend to the number of four congressional townships and any fractional townships contiguous thereto, and a voting population of twenty-five shall be deemed sufficient for civil township organization.

1096. Time when township organization shall be perfected. [Ch. 34, '90.] § 5. That it shall be the duty of the county commissioners of the several counties of this state to perfect the civil township organization of their respective counties at their regular meeting to be held in July, *anno Domini* eighteen hundred and ninety, by establishing such civil township lines and by appointing boards of supervisors for the several

townships to act until such officers are elected and qualified, as by existing laws governing the same; provided, that no such township government shall be organized without the consent of a majority of the legal voters of the township or townships proposed to be so organized.

1097. Powers, duties and compensation. [Ch. 34, '90.] § 6. The powers, duties and compensation of the several township officers shall be and remain the same as now defined and provided for by existing laws, or laws hereafter enacted.

1098. Subdivision. [Ch. 34, '90.] § 7. That in all cases where more than one congressional township has been, or shall hereafter be organized into a civil township, the same may be divided and attached to other townships, or organized into separate townships, as hereinafter provided.

1099. Petition to commissioners — action thereon. [Ch. 34, '90.] § 8. That whenever a majority of the legal voters of any congressional township, containing not less than twenty-five legal voters and constituting a portion of an organized township, shall petition the board of county commissioners to be set off from such township and organized into a separate township, or attached to some other township, which petition shall have endorsed thereon, or attached thereto, an affidavit made by one or more of the signers thereof, that the same is signed by a majority of the legal voters of such congressional township, then such board shall appoint a time for the consideration of such petition, not less than twenty days thereafter, and shall cause notice thereof to be sent through the mail or addressed [delivered] personally to the town clerk and to each member of the board of supervisors of the township of which such congressional township constitutes a part, and at the time so appointed the said board of county commissioners shall proceed to a consideration of said petition, and shall at the same time afford opportunity to any person or persons residents of the township to be affected thereby, to be heard in opposition thereto, and if, upon such hearing, it shall appear to said board of county commissioners that the prayer of said petition is in accordance with the wishes of a majority of the legal voters of the congressional township or fractional part thereof, so to be separately organized or attached, and that the interests of said township will be subserved thereby, said board shall proceed at once to divide the said organized township, and to fix and determine the boundaries of such new township as shall be formed by such division thereof, and to name the same.

1100. Commissioners designate place for first town meeting. [Ch. 34, '90.] § 9. The county commissioners shall thereupon designate

suitable places in each of the new townships so formed for holding the first annual town meeting which shall be holden at the time fixed by law for holding the regular annual town meeting. Notice of the time and place of holding such annual town meeting shall be given by the town clerk of the town so divided by posting notices in each of the townships so formed, as provided by law.

1101. Selection of township names. [Ch. 34, '90.] § 10. The town so formed by separation from the original township, shall be named in accordance with the expressed wish of a majority of the legal voters resident therein, when the same can be properly done; but if they fail to designate a name, or the same cannot be properly given to such township, the county commissioners may designate a name.

1102. Township officers. [Ch. 34, '90.] § 11. The township, a division of which has been declared as hereinbefore provided, shall continue as previously organized and the officers thereof shall hold their offices until the next annual town meeting thereafter, at which town meeting there shall be elected in each of the new townships so organized, by the legal voters thereof, a full board of township officers as provided by law.

1103. Adjustment of accounts and liabilities. [Ch. 34, '90.] § 12. Whenever any township is subdivided according to the provisions of this act, which has been bonded for school or other purposes, or against which there is any other outstanding indebtedness, and whenever moneys raised by taxation in such township shall have been expended for the erection of school buildings or other public improvements which on such subdivision shall inure to the benefit of one such new township to a greater extent than its equitable share thereof, an adjustment of such matters shall be made in the manner hereinafter provided.

Within ten days after the election and qualification of the boards of supervisors of the respective townships, so organized as hereinbefore provided, each of [said] boards shall appoint one suitable person, who shall be a legal voter of the township where appointed, and the board of county commissioners at their first meeting after such township election shall choose one disinterested person, who shall be a legal voter of said county, but not a resident of either of said townships, which three persons so appointed shall constitute a board for the readjustment and settlement of all differences between said townships growing out of such division of the original township.

Said board shall have power to determine and declare what portion of the bonded or other indebtedness of said original township shall be assumed and paid by each of the new townships, so organized as hereinbefore provided, and also to ascertain and determine what sum either of

said new townships shall pay to the other on account of school buildings or other public improvements which such township may have received prior to and retained on such division, and also to make a just and equitable division of all money or other property belonging to such original township at the time of such division.

All such divisions and adjustments shall be made, as near as may be, on the basis of the assessed valuation of property in each of said townships, as determined by the assessor for the year preceding such division, and on the value of such school buildings and other property at the time of such division of said townships.

1104. Report made by the board of adjustment. [Ch. 34, '90.] § 13. A written statement of the determination of said board, signed by the members thereof, or a majority of such members, shall be filed with the town clerks of each of such newly organized townships and also with the auditor or county clerk of the county in which such towns are situated, which determination, when so filed, shall be binding upon each of the townships to which the same relates.

1105. Meeting of board of adjustment designated by county commissioners. [Ch. 34, '90.] § 14. The first meeting of said board of adjustment shall be at a time and place to be designated by the board of county commissioners at the time said commissioners appoint a member of said board as hereinbefore provided.

1106. Compensation of members. [Ch. 34, '90.] § 15. The members of said board of adjustment shall each receive the sum of two dollars per day for each day actually and necessarily spent in the discharge of the duties imposed upon each board, which sum shall be paid in equal portions by the townships represented by said board.

1107. Fraction of a township may be attached to an adjoining township. [Ch. 34, '90.] § 16. A fraction of a township may be attached by said county commissioners to an adjoining township, or may be divided between two or more adjoining townships, or two or more fractions may be organized together, or organized separately, upon being petitioned [for] by a majority of the legal voters inhabiting such fraction of a township, if in the opinion of said board of commissioners, the best interests of the township will be subserved thereby.

All proceedings thereupon shall be as hereinbefore provided for the division and reorganization of townships.

ARTICLE 2. CORPORATE POWERS.

1108. Body corporate. Each town is a body corporate and has capacity:

1. To sue and be sued.
2. To purchase and hold lands within its own limits and for the use of its inhabitants, subject to the powers of the legislature.
3. To make such contracts and purchase and hold such personal property as may be necessary for the exercise of its corporate or administrative powers.
4. To make such orders for the disposition, regulation or use of its corporate property as may be deemed conducive to the interests of its own inhabitants. [C. L. 711.]

Contract to resurvey township by township supervisors is *ultra vires* and void. *Van Antwerp v. Dell Rapids Township*, 5 S. D. 447; 59 N. W. Rep. 209.

1109. Limitation of powers. No town shall possess or exercise any corporate powers except such as are enumerated in this chapter, or are especially given by law or necessary to the exercise of the powers so enumerated or granted. [C. L. 712.]

1110. Actions in corporate name. All acts or proceedings by or against a town in its corporate capacity shall be in the name of such town; but every conveyance of land within the limits of such town, made in any manner for the use or benefit of its inhabitants, has the same effect as if made to the town by name. [C. L. 713.]

ARTICLE 3. ANNUAL TOWN MEETINGS.

1111. Time of holding. The citizens of the several towns of this state qualified to vote at general elections shall annually assemble and hold town meetings in their respective towns on the first Tuesday of March, at such place in each town as the electors thereof at their annual town meetings from time to time appoint; and notice of the time and place of holding such meeting shall be given by the town clerk by posting up written or printed notices in three of the most public places in said town at least ten days prior to said meeting; provided, that before any change of place of holding town meetings is made, notice of such contemplated change may be given by any member of the town board to the town clerk, who shall in his regularly printed or written notices, as provided hereinabove, incorporate the special notice of the contemplated change of place of holding said town meeting. [C. L. 714.]

1111a. Public elections and meetings — where held. [Ch. 85, '99; ch. 62, '97.] § 1. All public elections held in or for any civil township or voting precinct, shall be held at the polling places established therein, and all regular meetings of the board of supervisors in and for any civil township may be held at the office of the township clerk of such township. Provided, however, that whenever an incorporated town has been carved out of, or is surrounded by the territory included within any civil township, or voting precinct, an election for said township or voting precinct may be held within such incorporated town or city which shall, within the meaning of this act, be held to be within such township or voting precinct.

1112. Election — term of office. [Ch. 84, '99.] § 1. That there shall be elected at the annual town meeting held on the first Tuesday of March, A. D. 1899, in each of the several organized civil townships within the state of South Dakota, three supervisors, one of whom shall be designated on the ballots as chairman, who shall hold their offices for the terms of one (1), two (2) and three (3) years respectively, as shall be designated on the ballots, and until their successors are severally elected and qualified.

1112a. Subsequent elections. [Ch. 84, '99.] § 2. At the annual town meetings held in each of the several organized civil townships within the state of South Dakota, in the year nineteen hundred, and annually thereafter, there shall be elected one supervisor, who shall hold his office for a term of three years and until his successor is elected and qualified, who shall fill the vacancy caused by the expiration of the term of office of the supervisor whose term expires as heretofore provided. Provided; that from and after the annual town meetings of the year nineteen hundred, the senior member of each of the several boards of supervisors shall be the chairman thereof.

1113. Powers of electors. The electors of each town have power at their annual town meeting:

1. To determine the number of pound masters and the location of pounds. [Ch. 35, '90, § 1.] And to determine whether land marks shall be erected at section and quarter corners throughout the said township.

2. To select such town officers as are required to be chosen.

3. To direct the institution or defense of actions in all controversies where such town is interested.

4. To direct such sums to be raised in such town for prosecuting or defending such actions as they may deem necessary.

5. To make all rules and regulations for impounding of animals.

6. To impose such penalties on persons offending against any rule or regulation established by said town, as they think proper, not exceeding ten dollars for each offense unless herein otherwise provided.

7. To apply such penalties, when collected, in such manner as they deem most conducive to the interests of the town.

8. To vote to raise such sums of money for the repair and construction of roads and bridges, for the support of the poor, and for other necessary town charges, as they deem expedient; provided, that they may at their annual town meeting direct such an amount of the poll or road tax of the town to be expended on the highways in an adjoining town as they deem conducive to the interests of the town, which labor and tax shall be expended under the direction of the supervisors of the town furnishing the same; provided, further, that where more than one entire congressional township is included within an organized town, the poll and road tax raised within the limits of each of such congressional townships shall be expended within such congressional township, unless raised to be expended outside of such organized town in an adjoining town. [C. L. 716.]

ABOLISH TOWNSHIP ORGANIZATIONS.

1114. Petition. [Ch. 117, '97.] § 1. Whenever a number of legal voters of any civil township in this state equal to a majority of the votes cast at the last township election shall petition the town clerk therefor, said town clerk of such township shall call an election in the manner prescribed by section seven hundred and eighteen, chapter ten of the compiled laws of the state of South Dakota for holding special town meetings, at which election the question shall be submitted "shall the civil township organization of township be abolished?" "Yes." "No."

1115. Election. [Ch. 117, '97.] § 2. Said election shall be held in the manner and under the regulation provided by law for the holding of elections for the election of civil township officers. All voters at said election in favor of abolishing said township organization shall erase the word "No" from their ballot. All voters at said election who do not favor the abolishing of said township organization shall erase the word "yes" from their ballot. It is hereby made the duty of the township clerk to provide a sufficient number of printed or written ballots for the proper conduct of said election.

1116. Majority vote determines. [Ch. 117, '97.] § 3. If a majority of the votes cast at said election shall be in favor of abolishing said civil township organization it shall be abolished and shall cease to exist. The clerk of said township shall transmit a statement of such action together with an abstract of the number of votes cast for and against said proposition at said election to the county auditor of said county in which the civil township is located.

1117. Surrender of records, papers and funds. [Ch. 117, '97.] § 4. Within thirty days after the holding of any election as aforesaid, the officers of said township shall deliver to the auditor of the county in which the township is located all the books, moneys, papers and personal property of whatsoever kind and shall thereupon cease to be such officers. The county auditor shall pay all moneys so received to the county treasurer to be by him disposed of as afterwards provided in this act. The county auditor shall make an inventory of all books, records, papers and personal property so received. The books, papers and records shall become a part of the permanent record of said auditor's office except the dockets of the justices of the peace which said dockets shall be delivered by the said auditor to the justice of the peace residing nearest to said justices whose offices are so abolished, and said justices to whom such dockets are so delivered by the auditor shall have full ju-

isdiction of all cases therein contained, the same as though such cases had been commenced in their own courts. The auditor shall be the custodian of all personal property belonging to said civil township until it is afterwards disposed of as provided in this act.

1118. Auditing accounts. [Ch. 117, '97.] § 5. At the next session of the board of county commissioners of the county in which any township is located which has voted to abolish its civil township organization, the said board of county commissioners shall audit the accounts of said township and shall order the payment of its outstanding debts, out of any moneys in the hands of the county treasurer to the credit of said township, and shall dispose of the personal property of such township and shall place the proceeds of such sale in the custody of the county treasurer for the credit of such township. If there be not sufficient money for the payment of all outstanding indebtedness, the board of county commissioners shall levy a tax sufficient for such purpose upon the property situated in such territory which shall be extended by the county auditor upon the tax levy for the year following such election and shall be collected by the county treasurer and shall be devoted to the extinguishing of the debts of said township in the order of their priority as shown by the records of said township.

1119. Road districts. [Ch. 117, '97.] § 6. At the first meeting of the board of county commissioners after any township ceases to be a civil township as provided by this act the said board of county commissioners shall district said territory in road districts and appoint road overseers, as provided by section twelve hundred and forty-three of the compiled laws of the state of South Dakota, and all moneys in the hands of the county treasurer to the credit of said township in excess of the amount required to pay the indebtedness of said township shall be paid to such overseer appointed by the board of county commissioners to be by him expended according to the laws governing such office.

1120. Indebtedness. [Ch. 117, '97.] § 7. This act shall not apply to townships which have an outstanding bonded indebtedness nor to any township owning real estate property.

1121. Land marks — surveyor to give bond. [Ch. 35, '90.] § 2. Whenever a town meeting shall have lawfully ordered the erection of land marks the town board shall procure a sufficient number of monuments of stone or other durable material, each not less than three feet in length and six inches square, flat top, having engraved thereon the characters used and designated in the United States governmental

surveys, and shall also contract with the county surveyor, or any competent surveyor, for the survey of all sections of said town and the erection of said monuments, one at each section corner and one at each external quarter section corner in said town, each to be set two and one-half feet in the ground, except in highways, where the top shall be even with or below the surface. Such surveyor shall, before the signing and delivery of such contract, give a bond to the town in the sum of one thousand dollars, with sufficient sureties, to be approved by the board, conditioned that he will make a correct and true survey of all the sections in said town and cause land marks to be set permanently at the section and quarter section corners as established by the United States survey, and [to] faithfully perform such work and the duties imposed upon him according to law.

1122. Minutes of survey to be recorded in the office of the register of deeds. [Ch. 35, '90.] § 3. Such surveyor shall make, in all cases, a certificate setting forth correct and full minutes of the survey, and giving exact bearings and distances of each monument from each other monument nearest it on any line in such town; and such statement shall be recorded in the office of the register of deeds of the county. Such land marks shall in all cases be set on section corners and quarter posts established by the United States survey, but if there be a clerical error or omission in the government field notes, or the bearing trees, mounds, or other locating evidences specified therein, be destroyed or lost, and there be no other reliable evidence by which said corner can be identified, said surveyor shall re-establish said corner under the rules adopted by the general government in the survey of public lands. Such surveyor shall, in all cases, set forth such action in his certificate of the survey.

1123. Town board may order the erection of land marks in certain cases. [Ch. 35, '90.] § 4. Whenever any section corners upon the public highways can not be identified the town board may, without previous vote of the town meeting, have such corners located by a competent surveyor, and cause land marks similar to those above described to be erected at such corners so established.

1124. Such land mark to be erected, where. [Ch. 35, '90.] § 5. All land marks set under authority of the provisions of the preceding sections shall be presumptively deemed to be at the section and quarter section corners, as originally established by the United States survey, at which they respectively purport to be set.

1125. Levy of land mark tax. [Ch. 35, '90.] § 6. In case any town shall vote in favor of the erection of permanent land marks, the town

board shall ascertain the amount of money requisite for such purpose, and deliver a statement of such amount to the town clerk, who shall add said amount to the other amounts to be raised for town purposes for the current year and insert the same in the tax roll, and it shall be collected and paid into the treasury in like manner as other taxes.

Location of township lines by county surveyor is *prima facie* evidence against landowners. Webster v. White et al., 8 S. D. 479; 66 N. W. Rep. 1145.

ARTICLE 4. SPECIAL TOWN MEETINGS.

1126. When held. Special meetings may be held for the purpose of electing town officers to fill vacancies that occur, also for the purpose of transacting any lawful business, whenever the supervisors, town clerk and justices of the peace, or any two of them, together with at least twelve other freeholders of the town, file in the office of the town clerk a written statement that a special meeting is necessary to the interest of the town. [C. L. 717.]

1127. Duty of town clerk — notice. Every town clerk with whom such statement is filed as required in the preceding section, shall record the same and immediately cause notice to be posted up in five of the most public places in the town, giving at least ten days' notice of such special meeting; and if there is a newspaper printed in said town he shall cause a copy of said notice to be published therein at least three days before the time appointed for such meeting. [C. L. 718.]

1128. Notice, what to contain. Every notice given for a special town meeting shall specify the purpose for which it is to be held, and no other business shall be transacted at such meeting than such as is specified in such notice. If vacancies in office are to be filled at such meeting the notice shall specify in what office vacancies exist, how they occurred, who was the last incumbent, and when the legal term of each office expires. [C. L. 719.]

ARTICLE 5. MODE OF CONDUCTING TOWN MEETINGS.

1129. Organization of town meeting. The electors present at any time between nine and ten o'clock in the forenoon of the day of the annual town meeting or special town meeting, shall be called to order by the town clerk if there is one present; in case there is none present then the voters may elect by acclamation one of their number chairman and three of their number judges of town meeting, who shall be duly sworn and be judges of the qualifications of township electors. They shall then proceed to choose one of their number to preside as moderator of such meeting. The town clerk last before elected shall be clerk of the meeting, and keep full minutes of its pro-

ceedings, in which he shall enter at length every order or direction and all rules and regulations made by the meeting. If the town clerk is absent, then such person as is elected for that purpose shall act as clerk of the meeting. [C. L. 720.]

1130. Duty of moderator. At the opening of every town meeting, the moderator shall state the business to be transacted, and the order in which it shall be entertained, and no proposition to vote a tax shall be acted on out of the order of business as stated by the moderator, and no proposition to reconsider any vote shall be entertained at any town meeting unless such proposition to reconsider is made within one hour from the time such vote was passed, or the motion for such reconsideration is sustained by a number of voters equal to a majority of all the names entered upon the poll list at such election up to the time such motion is made; and all questions upon motions made at town meetings shall be determined by a majority of the electors voting; and the moderator shall ascertain and declare the result of the votes on each question. [C. L. 721.]

1131. Opening of polls. Before the electors proceed to elect any town officer, proclamation shall be made of the opening of the polls by the moderator, and proclamation shall in like manner be made of the adjournment, and of the opening and closing of the polls, until the election is ended. [C. L. 722.]

1132. Who entitled to vote. No person is a voter at any town meeting unless he is qualified to vote at general elections, and has been for the last ten days an actual resident of the town wherein he offers to vote. [C. L. 723.]

1133. Challenges. If any person offering to vote at any election or upon any question arising at such town meeting is challenged as unqualified, the judges of the town meeting shall proceed thereupon in like manner as the judges at the general election are required to proceed, adapting the oath to the circumstances of the town meeting. [C. L. 724.]

1134. Officers elected by ballot. The supervisors, treasurer, town clerk, assessor, justices of the peace, constables and overseer of the poor [highways] in each township shall be elected by ballot. All other officers, if not otherwise provided by law, shall be chosen either by yeas and nays or by a division, as the electors determine. [C. L. 725.]

1135. Names on one ballot. When the electors vote by ballot all the officers voted for shall be named in one ballot, which shall contain, written or printed, or partly written and partly printed, the names of the persons voted for and the offices to which such persons are intended

to be chosen, and shall be delivered to one of the judges so folded as to conceal its contents. [C. L. 726.]

1136. Poll list. When the election is by ballot a poll list shall be kept by the clerk of the meeting, on which shall be entered the name of each person whose vote is received. [C. L. 727.]

1137. Judges to deposit ballot. When the election is by ballot one of the judges shall deposit the ballot in a box provided for that purpose. [C. L. 728.]

1138. Judges canvass votes. At the close of every election by ballot the judges shall proceed publicly to canvass the votes, which canvass when commenced shall continue without adjournment or interruption until the same is completed. [C. L. 729.]

1139. Manner of canvassing. The canvass shall be conducted by taking a ballot at a time from the ballot-box and counting until the number of ballots is equal to the number of names on the poll list, and, if there are any left in the box they shall be immediately destroyed; and the person having the greatest number of votes for any office shall be declared duly elected; provided, that if two or more persons have an equal and the highest number of votes for any office, the judges of election shall at once publicly by lot determine who of such persons shall be declared elected. If on opening the ballots two or more ballots are found to be so folded that it is apparent that the same person voted them the board shall destroy such votes immediately. [C. L. 730.]

1140. Result announced at meeting. The canvass being completed, a statement of the result shall be entered at length by the clerk of the meeting in the minutes of its proceedings to be kept by him as before required, which shall be publicly read by him to the meeting, and such reading shall be deemed notice of the result of the election to every person whose name is entered on the poll list as a voter. [C. L. 731.]

1141. Minutes to be filed. The minutes of the proceedings of every town meeting, subscribed by the clerk of said meeting and by the judges, shall be filed in the office of the town clerk within two days after such town meeting. [C. L. 732.]

1142. Notice of election. The clerk of every town meeting within ten days thereafter shall transmit to each person elected to any town office, whose name is not entered on the poll list as a voter, notice of his election. [C. L. 733.]

1143. Failure to elect — proceeding. In case any town refuses or neglects to organize and elect town officers at the time fixed by law for

holding annual town meetings, twelve freeholders of the town may call a town meeting for the purpose aforesaid, by posting up notices in three public places in such town, giving at least ten days' notice of such meeting; which notice shall set forth the time and place and object of such meeting; and the electors when assembled by virtue of such notice shall possess all the powers conferred upon them at the annual town meeting. In case no such notice is given as aforesaid within thirty days after the time for holding the annual town meeting, the board of county commissioners of the county shall on the affidavit of any freeholder of said town, filed in the office of the clerk of the board, setting forth the facts, proceed at any regular or special meeting of the board and appoint the necessary town officers of such town, and the persons so appointed shall hold their respective offices until others are elected and qualified in their places, and shall have the same powers and be subject to the same duties as if they had been duly elected. [C. L. 734.]

ARTICLE 6. BY-LAWS.

1144. Publication of by-laws. No by-law made by any town shall take effect before the same is published by posting up copies thereof in three of the most public places in the town; and such by-laws, duly made and so published, are binding upon all persons coming within the limits of the town as well as upon the inhabitants thereof, and shall remain in force until altered or repealed at some subsequent town meeting. [C. L. 735.]

1145. Town clerk to post by-laws. The town clerk shall post in three of the most public places in his town, copies of all by-laws made by such town, and shall make an entry in the town records of the time when, and the place where such by-laws were posted. [C. L. 736.]

ARTICLE 7. QUALIFICATION OF OFFICERS.

1146. Who eligible to office. Every person qualified to vote at town meetings is eligible to any town office. [C. L. 737.]

1147. Oath of office. Every person elected or appointed to the office of supervisor, town clerk, assessor, treasurer or constable, within ten days after he is notified of his election or appointment shall take and subscribe before the town clerk or justice of the peace an oath to support the constitution of the United States and the constitution of this state, and faithfully to discharge the duties of his office (naming the same) to the best of his ability. Such oath shall be administered without fee and certified by the officer before whom it was taken, with the date of taking the same. [C. L. 738.]

1148. Certificate of oath filed. The person taking such oath shall immediately and before entering upon the duties of his office, file the certificate of such oath in the office of the town clerk. [C. L. 739.]

1149. Justice of the peace file oath and bond. Every person elected or appointed to the office of justice of the peace shall within ten days after receiving notice thereof take and subscribe before any other officer duly authorized to administer oaths an oath to support the constitution of the United States and the constitution of the state of South Dakota, and faithfully and impartially to discharge the duties of his office according to the best of his ability. He shall also execute a bond to the board of supervisors, with two or more sufficient sureties to be approved by the chairman, in the penal sum of not less than five hundred dollars nor more than one thousand dollars, conditioned for the faithful discharge of his official duties. Said chairman shall endorse thereon his approval of the sureties named in such bond, and such justice shall immediately file the same, together with his oath of office, duly certified, with the clerk of the circuit court of the proper county for the benefit of any person aggrieved by the acts of said justice, and any person aggrieved may maintain an action on said bond in his own name against said justice and his sureties. [C. L. 740.]

1150. Certificate authorized. The bond and oath of office of a justice of the peace, filed in the office of the clerk of the circuit court for the county or judicial subdivision, are sufficient authority for said clerk to certify to the official acts and signature of such justice of the peace. [C. L. 741.]

1151. Jurisdiction of township justice. All justices of the peace of any township of this state shall have the same power and jurisdiction in their respective counties as is now or hereafter may be conferred upon justices of the peace by law and by an act entitled "an act to establish a code of procedure in courts of justices of the peace, and to limit the jurisdiction of the same," approved February thirteenth, eighteen hundred and seventy-seven [the justices' code], and all amendments made or which may be hereafter made to said act. The civil and criminal proceedings before all justices of the peace of any township shall be governed and controlled by an act entitled "an act to establish a code of procedure in courts of justices of the peace and to limit the jurisdiction of the same," approved February thirteenth, eighteen hundred and seventy-seven [the justices' code], and the code of criminal procedure and all amendments made or which may be hereafter made to said act and codes. [C. L. 742.]

1152. Bond of treasurer. Every person elected or appointed to the office of treasurer, before he enters upon the duties of his office, shall execute and deliver to the supervisors of the town and their successors in office, a bond with one or more sureties, to be approved by the chairman of the board, in double the probable amount of money to be received by him, which amount shall be determined by said board, conditioned for the faithful execution of his duties as such treasurer. [C. L. 743.]

1153. Bond to be filed, when. The said chairman shall within six days thereafter file such bond with said approval indorsed thereon, in the office of register of deeds, who shall record the same in a book provided for that purpose. [C. L. 744.]

1154. Constable's oath and bond. Every person chosen to the office of constable, before he enters upon the duties of his office and within eight days after he is notified of his election or appointment, shall take and subscribe the oath of office prescribed by law and execute a bond to the board of supervisors in such penal sum as the supervisors direct, with one or more sufficient sureties to be approved by the chairman of said board or the town clerk, conditioned for the faithful discharge of his duties. The chairman of said board or the town clerk shall, if such bond is approved, endorse his approval thereon and cause such bond to be filed with the town clerk for the benefit of any person aggrieved by the acts or omissions of said constable, and any person so aggrieved or the town may maintain an action on said bond against said constable and sureties. [C. L. 745.]

1155. Failure to furnish bond deemed refusal to serve. If any person elected or appointed to the office of treasurer or constable does not give such security and take such oath as is required above within the time limited for that purpose, such neglect shall be deemed a refusal to serve. [C. L. 746.]

1156. Neglect to qualify is deemed a refusal to serve. If any person elected or appointed to any town office, of whom an oath or bond is required, neglects to file the same within the time prescribed by law, such neglect shall be deemed a refusal to serve in such office. [C. L. 747.]

1157. Penalty for neglect to take oath. If any town officer who is required by law to take the oath of office enters upon the duties of his office before taking such oath, he forfeits to such town the sum of fifty dollars. [C. L. 748.]

1158. Road overseer and pound master to file acceptance. Every person elected or appointed to the office of overseer of highways or pound

master, before he enters upon the duties of his office and within ten days after he is notified of his election or appointment, shall file in the office of the town clerk a notice signifying his acceptance of such office. A neglect to file such notice shall be deemed a refusal to serve. [C. L. 749.]

1159. Tenure of office. Town officers, except justices of the peace and constables, hold their offices for one year and until their successors are elected or appointed to their places and are qualified. The justices of the peace and constables shall hold their offices for two years and until others are chosen and qualified. [C. L. 750.]

1160. Bond. [Ch. 128, '89.] § 1. That all township assessors shall give bond in the penal sum of five hundred dollars, with two good and sufficient sureties, to be approved by the board of supervisors of the township for which said assessor is elected; and said assessor and all other township and precinct officers required by law to give bond, shall immediately, after the approval thereof, hand the same to the clerk of the township for which they were elected, whose duty it shall be to forthwith file said bonds with the clerk of the circuit court as provided in section five, of chapter five, of the political code, and no further filing or record shall be necessary.

1161. Duty of clerk. [Ch. 128, '89.] § 2. It shall also be the duty of the clerk of the township to require all legally elected officers, who accept the office to which they are elected, to duly qualify within the time prescribed by law, and in accordance with all other provisions thereof. If any clerk refuses or neglects to procure and file the bonds of township officers, as provided for by this act, [he] shall be liable to a fine of not less than ten dollars nor more than fifty dollars.

1162. Fee for filing. [Ch. 128, '89.] § 3. An appropriation of fifty cents for each bond required to be filed shall be made by the township and paid to the clerk of court for the proper filing and entering of such bond.

ARTICLE 8. VACANCIES.

1163. Resignations. The board of supervisors of any town may for sufficient cause shown to them accept the resignation of any town officer in their town, and whenever they accept any such resignation they shall forthwith give notice thereof to the town clerk. [C. L. 751.]

1164. Vacancies, how filled. Whenever any town fails to elect the proper number of town officers, or whenever any person elected to a town office fails to qualify, or whenever any vacancy happens in any town office from death, resignation, removal from town or other cause,

the justices of the peace of the town, together with the board of supervisors or a majority of them, shall fill the vacancy by appointment by warrant under their hand, and the persons so appointed shall hold their offices until the next annual town meeting and until others are elected and qualified in their places, and shall have the same power and be subject to the same duties and penalties as if they had been duly elected. [C. L. 752.]

1165. Vacancies in appointing board. Whenever a vacancy occurs from any cause in any of the offices enumerated in the foregoing section, composing the board of appointment for the appointment of town officers in case of vacancy, the remaining officers of such appointing board shall fill any vacancy thus occurring. [C. L. 753.]

1166. Auditor appoint assessor. When any township assessor is elected and fails or refuses to qualify to discharge the duties of his office, or if the electors of said township fail from any reason whatever to elect an assessor, and the town board of said township fails or refuses to appoint an assessor for said township on or before the fifteenth day of April of that year for which said assessor is to serve, then it shall be the duty of the county auditor or county clerk to appoint an assessor for said township, who shall be a resident of the township of which he is to serve as assessor. [C. L. 754.]

ARTICLE 9. BOARD OF HEALTH.

1167. Town supervisors are board of health. The town supervisors shall constitute a board of health, and within their respective towns shall have and exercise all the powers necessary for the preservation of the public health. [C. L. 755.]

1168. Powers. The board of health may examine into all nuisances, sources of filth and causes of sickness, and make such regulations respecting the same as they may judge necessary for the public health and safety of the inhabitants; and every person who shall violate any order or regulation made by any board of health and duly published shall be deemed guilty of a misdemeanor and punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months. [C. L. 756.]

1169. Public notice of orders and regulations. Notice shall be given by the board of health of all orders and regulations made by them, by publishing the same in some newspaper if there is one published in such town or the county; if there is none, then by posting up such notice in five public places therein; and such publication of said orders and regulations shall be deemed a legal notice to all persons. [C. L. 757.]

1170. Penalty for violation. Whenever any nuisance, source of filth or cause of sickness is found on private property, the board of health shall order the owner or occupant thereof at his own expense to remove the same within twenty-four hours; and if the owner or occupant thereof neglects so to do he shall forfeit a sum not exceeding fifty dollars, to be recovered in the name of and for the use of the town. [C. L. 758.]

1171. Proceedings on refusal to obey. Whenever such owner or occupant shall not comply with such order of the board of health, said board may cause the said nuisance, source of filth or cause of sickness to be removed, and all expenses incurred thereby shall be paid by the said owner or occupant or by such other person as has caused or permitted the same. [C. L. 759.]

1172. Board to enter infected premises — proceeding. Whenever the board of health thinks it necessary for the preservation of the health of its inhabitants to enter any building or vessel in their town for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth or cause of sickness, and shall be refused such entry, any member of the board may make complaint under oath to a justice of the peace of his town, stating the facts in the case so far as he has knowledge thereof. [C. L. 760.]

1173. Warrant — proceedings. Such justice shall thereupon issue a warrant directed to the sheriff or any constable of the county, commanding him to take sufficient aid, and being accompanied by two or more of the board of health, between the hours of sunrise and sunset, to repair to the place where such nuisance, source of filth or cause of sickness complained of may be, and the same destroy, remove or prevent, under the direction of the members of such board of health. [C. L. 761.]

1174. Quarantine. When any person coming from abroad or residing in any town or city in this state is infected or lately has been infected with the small-pox or other contagious disease dangerous to the public health, the board of health of the town or city where such sick or infected person is may immediately cause such person to be removed to a separate house if it can be done without danger to his or her health, and shall provide for such person or persons nurses, medical attendance and other necessaries, which shall be a charge in favor of such town or city upon the person so provided for, his parents, guardian or master, if able, otherwise upon the county to which he belongs, or upon the state, if said person be a non-resident of the state. [C. L. 762.]

1175. Quarantine when person cannot be moved. If such infected person cannot be removed without danger to his or her health, the board of health shall make provision as directed in the preceding section, for such person in the house where he may be, and in such case they may cause the persons in the neighborhood to be removed, and may take such other measures as they may deem necessary for the safety of the inhabitants. [C. L. 763.]

1176. Hospitals. When a disease dangerous to the public health breaks out in any town, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best for their accommodation and the safety of the inhabitants, which shall be subject to the regulations of the board; and the board may cause any sick and infected person to be removed thereto, unless his condition will not admit of such removal without danger to his health, in which case the house or place where he remains shall be considered as a hospital, and with all its inmates subject to the regulations of the board. [C. L. 764.]

ARTICLE 10. POWERS AND DUTIES OF SUPERVISORS.

1177. Regular meetings. The township boards of supervisors shall hold regular meetings as follows: They shall meet on the last Tuesday of February and the fourth Monday of June, as now prescribed by law, and in addition thereto they shall meet on the last Tuesday of March and the last Tuesday of October of each year. [C. L. 765.]

1178. Where held. Said meetings shall be held at the office of the town clerk or at the usual place for holding the annual town meeting if there be one. They shall meet not later than ten o'clock A. M. and shall not adjourn before four o'clock P. M. [C. L. 766.]

1179. Business to be transacted. At their meetings in February and June they shall perform all the duties now required of them by law to be transacted at said meetings, and any other business that may legally come before them. [C. L. 767.]

1180. Approval of bonds. At their meeting in March they shall approve the bonds of township officers (and said officers shall immediately enter upon the duties of their office), and shall assess the highway labor and road tax for the ensuing year and perform all the duties required of them in section twelve hundred and seventy-one. [C. L. 768.]

1181. Audit accounts. At their meeting in October they shall audit accounts, settle with the road overseers and transact any other business that may come before them. [C. L. 769.]

1182. Adjournments—special meetings. They may adjourn from time to time, and in case of emergency may hold special meetings on call of the clerk of three days' notice. [C. L. 770.]

1183. Persons having business must appear. It shall be the duty of all persons having business to transact with the board of supervisors of any town to appear before said board at any regular meeting, or file such business with the clerk to be laid before the board by him at their next meeting. [C. L. 771.]

1184. Powers. The supervisors shall have charge of such affairs of the town as are not by law committed to other town officers; and they shall have power to draw orders on the town treasurer for the disbursement of such sums as may be necessary for the purpose of defraying the incidental expenses of the town, and for all moneys raised by the town to be disbursed for any other purpose. [C. L. 772.]

1185. Improving streets. Whenever any incorporated village or town which is laid out into streets is included in the limits of an organized township, the town supervisors are authorized to cause improvements to be made in any street that may be needed as a highway if the corporate authorities of said village or town neglect to make such improvement. [C. L. 773.]

1186. Board prosecute actions. The supervisors shall by their name of office prosecute for the benefit of the town, all actions upon bonds given to them or their predecessors in office; and shall also sue for and collect all penalties and forfeitures in respect to which no other provision is made, incurred by any officer or inhabitant of the town; and they shall have power, in like manner, to prosecute for any trespass committed on any public inclosure, highway or property belonging to the town, and shall pay all moneys collected under this section to the town treasurer. [C. L. 774.]

1186a. Purchase of machinery, etc.—limitations. [Ch. 118, '97.] § 1. That neither the board of supervisors of any civil township, nor the board of trustees of any incorporated town within this state shall have power to enter into any contract for the purchase of any road grader, or any other machine or tool whatsoever, the purchase price of which exceeds the sum of one hundred dollars without submitting the same to, and securing the approval of the electors of such township or incorporated town in the manner which is, or may hereafter be provided by law for submitting questions to the electors of such township or incorporated town.

1186b. Unlawful contracts. [Ch. 40, '97.] § 1. All contracts hereafter made by any civil township officer or supervisor in his capacity as such officer, except contracts made at a regular or special meeting of the civil township board, shall be deemed to be unlawful and not binding upon such civil township.

1187. Quorum. Any two of the supervisors constitute a quorum for the performance of any duties required by law of the town supervisors, except when otherwise provided. [C. L. 775.]

ARTICLE 11. POWERS AND DUTIES OF OFFICERS — TOWNSHIP CLERK.

1188. Town clerks administer oaths. The town clerk of the several towns, city clerks of all cities, and recorders of all villages in this state, are hereby authorized to administer all oaths and take all acknowledgments of instruments, authorized or required by law. [C. L. 776.]

1189. Deputy. The town clerk shall have the custody of the record books and papers of the town when no other provision is made by law, and he shall duly file and safely keep all certificates of oaths and other papers required by law to be filed in his office. He may at his discretion appoint a deputy town clerk, for whose acts he shall be responsible. Before any deputy town clerk shall enter upon the duties of his office he shall take and subscribe the oath required by law, which oath shall be filed in the office of the clerk of the court. [C. L. 777.]

1190. Keep town records. He shall record in the book of records of his town, minutes of the proceedings of every town meeting, and he shall enter therein every order or direction and all rules and regulations of any such town meeting; and shall also file and preserve all accounts audited by the town board or allowed at a town meeting, and enter a statement thereof in such book of records. [C. L. 778.]

1191. Bond and oath. Every person elected or appointed, to the office of town clerk in any of the towns of this state shall before he enters upon the duties of his office and within the time prescribed by law for filing his oath of office, execute a bond with two or more sufficient sureties to be approved by the town treasurer, in such penal sum as the supervisors direct, conditioned for the faithful discharge of his duties. Said bond so approved shall be filed in the office of the clerk of the circuit court for the benefit of any person aggrieved by the acts or omissions of said town clerk, and any person so aggrieved or the town may maintain an action on said bond against said town clerk and sureties. [C. L. 779.]

1192. Name of constable sent to clerk of circuit court. Every town clerk immediately after the qualification of any constable elected or appointed in his town shall transmit to the clerk of the circuit court of the county the name of such constable. [C. L. 780.]

1193. Name of justice sent to clerk of circuit court. Each town clerk shall immediately after the election of any justice of the peace in his town transmit a written notice thereof to the clerk of the circuit court of said county, stating therein the name of the person elected and the term for which he is elected; and if elected to fill a vacancy, he shall state in said notice who was the last incumbent of the office. [C. L. 781.]

1194. Penalty. If any town clerk wilfully neglects to make such return such omission is hereby declared a misdemeanor, and on conviction thereof the person so offending shall be adjudged to pay a fine not exceeding ten dollars. [C. L. 782.]

TOWN TREASURER.

1195. Duties. The town treasurer shall receive and take charge of all moneys belonging to the town or which are by law required to be paid into the town treasury, and shall pay over and account for the same upon the order of such town or the officers thereof duly authorized in that behalf, made pursuant to law, and shall perform all such duties as may be required of him by law. [C. L. 783.]

1196. Keep accounts of receipts and disbursements. Every town treasurer shall keep a true account of all moneys by him received by virtue of his office, and the manner in which the same are disbursed, in a book provided at the expense of the town for that purpose, and exhibit such account, together with his vouchers, to the town board at its annual meeting for adjustment; and he shall deliver all books and property belonging to his office and the balance of all moneys in his hands as such treasurer, to his successor in office on demand after such successor has qualified according to law. [C. L. 784.]

1197. Draw moneys from county. The town treasurer shall from time to time draw from the county treasurer such moneys as have been received by the county treasurer for the use of his town, and on receipt of such moneys shall deliver proper vouchers therefor. Each town treasurer shall be allowed and entitled to retain two per centum of all moneys paid into the town treasury for receiving, safe keeping and paying over the same according to law, except such moneys as are appropriated for bounty to soldiers, of which he shall only be allowed to retain one per centum. [C. L. 785.]

1198. Statements. Each town treasurer within five days preceding the annual town meeting shall make out a statement in writing of the moneys by him received into the town treasury from the county treasurer and from all other officers and persons, and also of all moneys paid out by him as such treasurer, in which statement he shall set forth particularly from whom and on what account such moneys were received by him, with the amount received from each officer or person and the date of receiving the same, also to whom and for what purpose any moneys have been paid out by him, with the amount and date of each payment. He shall also state therein the amount of moneys remaining in his hands as treasurer. Such statement shall be filed by him in the office of the town clerk, and shall be by such clerk carefully preserved and recorded in the town book of records, and a duplicate of said statement shall at the same time be filed by the township treasurer with

the county clerk or auditor, as the case may be, for his respective county. [C. L. 786.]

1199. Penalty for neglect. Every town treasurer who refuses or neglects to comply with the provisions of the four preceding sections, shall forfeit not more than two thousand dollars, to be recovered in any court of competent jurisdiction, the amount to be fixed by the jury trying the cause, or by the court, if there is no jury impaneled, and may be recovered by a civil action in the name of the person who prosecutes the same, with costs of the suit; one-half shall go to the person so prosecuting, and the remainder to the town of which such delinquent is or has been treasurer. [C. L. 787.]

1200. Warrants — record — indorsements. Each and every town treasurer in this state shall keep a suitable book to be provided at the expense of the town, in which he shall enter the town orders that he cannot pay for want of funds when presented to him for payment, which orders when presented shall be endorsed by such treasurer by putting upon the back of the same the words "not paid for want of funds," giving the date of such indorsement, signing the name as town treasurer, which order when so indorsed shall bear interest from that date until paid. All town orders shall be paid in the order that they are registered, out of the first moneys that come into the town treasurer's hands for such purposes. [C. L. 788.]

ASSESSORS.

1201. How governed. The township assessors shall be governed by and make assessments and returns as provided in chapter fifteen of the political code, and shall be paid for their services out of the township treasury. [C. L. 789.]

ARTICLE 12. BOARD OF AUDITORS

1202. Supervisors to audit accounts. The supervisors constitute a town board for the purpose of auditing all accounts payable by said town; and if for any cause there are not three supervisors present to constitute said board the chairman, and in his absence either of the supervisors, may notify any one or so many of the justices of the peace of the town as will, together with the supervisors present, make a board of three; and the board so constituted shall have authority to act as the town board. [C. L. 790.]

1203. Meetings of town board. The town board shall meet on the Tuesday next preceding the annual town meeting to be held in said town, and on the last Tuesday of October in each year, and at such other times as they deem necessary and expedient, for the purpose of audit-

ing and settling all charges against said town; and they shall state on each account the amount allowed by them; but no allowance shall be made for any account which does not specifically state each item of the same and the nature thereof. [C. L. 791.]

1204. Audit accounts of treasurer. The board shall also, at their annual meeting [on the last Tuesday of February] in each year, examine and audit the accounts of the town treasurer for all moneys received and disbursed by him as such officer; and they shall audit the accounts of all other town officers who are authorized by law to receive or disburse any money of the town by virtue of their office. [C. L. 792.]

1205. Report of accounts. Such board shall draw up a report, stating in detail the items of account audited and allowed, the nature of each account, and the name of the person to whom such account was allowed, including a statement of the fiscal concerns of the town, and an estimate of the sum necessary for the current expenses thereof, the support of the poor and other incidental expenses for the ensuing year. [C. L. 793.]

1206. Read at town meeting. Such report shall be produced and publicly read by the town clerk at the next ensuing town meeting, and the whole or any portion of such report may be referred by the order of the meeting to a committee, whose duty it shall be to examine the same and report thereon to such meeting. [C. L. 794.]

1207. Treasurer to pay orders. The amount of any account audited and allowed by the town board and the amount of any account voted to be allowed at any town meeting shall be paid by the town treasurer on the order of said board signed by the chairman and countersigned by the clerk; and all orders issued to any person by the town board for any sum due from such town shall be receivable in payment of town taxes of said town. [C. L. 795.]

1208. Town clerk — duties as clerk board supervisors. The town clerk shall be clerk of the town board, and shall keep a true record of all their proceedings in his office.

ARTICLE 13. BOARD OF REVIEW

1209. Supervisors review and correct assessments. The board of supervisors of each town, the assessor, recorder, and president of each incorporated village, and the assessor, recorder, and mayor of each city (except cities whose charter provides for a board of equalization), shall meet on the fourth Monday of June at the office of the town clerk or recorder or city clerk, for the purpose of reviewing the assessment of property in such town or district, and they shall immediately proceed to examine, ascertain and see that all taxable property in their

town or district has been properly placed upon the list and duly valued by the assessor; and in case any property, real or personal, shall have been omitted by inadvertence or otherwise, it shall be the duty of said board to place the same upon the list with the true value thereof, and proceed to correct the assessment so that each tract or lot of real property, and each article, parcel, or class of personal property shall be entered on the assessment list at the true and full value thereof; but the assessment of the property of any person shall not be raised until such persons have been duly notified of the intent of the board so to do. And on the application of any person considering himself aggrieved they shall review the assessment and correct the same as shall appear to them just. Any two of said officers are authorized to act at such meeting, and they may adjourn from day to day until they shall finish the hearing of all cases presented on that day. All complaints and grievances of individuals, residents of the town or district, in reference to the assessment of personal property shall be heard and decided by the town board; provided, that the complaints of non-residents in reference to the assessment of any property, real or personal, and of others in reference to any assessment made after the meeting of the town board of review, shall be heard and determined by the county board. [C. L. 797.]

1210. Notice of town meeting. The assessor shall cause at least ten days' previous notice of the time and place of the meeting of the town board of review, by posting notices in at least three public places in his town or district, but the failure to give such notice or hold such meeting shall not vitiate such assessment, except as to the excess of valuation of tax thereon shown to be unjustly made or levied. [C. L. 798.]

ARTICLE 14. FEES OF OFFICERS.

1211. Compensation of town officers. [Ch. 126, '89.] The following town officers are entitled to compensation at the following rates for each day necessarily devoted by them to the service of the town in the duties of their respective offices: The town assessors shall receive for their services three dollars per day while engaged in their respective duties as such assessors; provided, that compensation received by such assessor shall not exceed the sum of sixty dollars per annum in any congressional township. The town clerks and supervisors shall receive for their services one dollar and a half per day when attending to business in their town, and two dollars when attending to business out of the town; no town supervisor shall receive more than thirty-five dollars compensation in any one year; provided, that the town clerk shall be paid fees for the following, and not a per diem: For serving notices of election upon

town officers, as required by law, twenty-five cents each; for filing any paper required by law to be filed in his office, ten cents each; for posting up notices required by law, twenty-five cents each; for recording any order or any instrument or writing authorized by law, ten cents for each hundred words; for copying any record or instrument on file in his office and certifying the same, ten cents for each hundred words, to be paid for by the person applying for the same; provided, further, that at any town meeting, before the electors commence balloting for officers they may by resolution reduce or increase the compensation of officers, but no such increase shall exceed one hundred per cent. [C. L. 799.]

ARTICLE 15. CLAIMS AGAINST TOWNSHIPS.

1212. Accounts, how stated. Before any account, claims or demands against any town or county of this state for any property or services for which such town or county shall be liable shall be audited or allowed by the board or officers authorized by law to audit and allow the same, the person in whose favor such account, claim or demand shall be, or his agent, shall reduce the same to writing in items and shall verify the same to the effect that such account, claim or demand is just and true, that the money therein charged was actually paid for the purposes therein stated, that the property therein charged was actually delivered or used for the purposes therein stated and was of the value therein charged, and that the services therein charged were actually rendered and of the value therein charged, or in case such services were official for which fees are prescribed by law then that the fees or amounts charged therefor are such as are allowed by law, and that no part of such account, claim or demand has been paid; provided, that the provisions of this act shall not apply to any claim or demand for an annual salary or per diem of jurors or witnesses fixed by or in pursuance of any statute. [C. L. 800.]

Presenting claims to town board for auditing, is not a condition precedent to bring an action thereon. *Short v. Civil Township of White Lake*, 8 S. D. 148; 64 N. W. Rep. 432.

1213. Accounts must be verified. The verification required by the preceding section may be made before any officer authorized by law to administer oaths, or before any member of the board to which the account, claim or demand shall be presented to be audited, and every member of such board is hereby authorized to administer the proper oath in such cases; and every person who shall wilfully or knowingly swear falsely on any such cases shall be deemed guilty of wilful perjury and be punished accordingly; provided, that in case any such account, claim or demand shall be made or presented by any administrator or executor on behalf of the estate of a deceased person he shall not be re-

quired to verify the same, but may prove the same otherwise to the satisfaction of the board. [C. L. 801.]

1214. Consideration of account — procedure. Whenever an account, claim or demand against any town or county shall have been verified in the manner prescribed in this act, the board of officers to whom the same shall be presented may receive and consider the same and may allow or disallow the same in whole or in part, as to such board or officers shall appear just or lawful, saving to such claimants the right of appeal. [C. L. 802.]

1215. Penalty for auditing account not verified. Any member of such board who shall audit and allow any account, claim or demand required by this act to be itemized and verified, without the same having been first duly itemized and verified, shall be deemed guilty of a misdemeanor and be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [C. L. 803.]

ARTICLE 16. SUITS BY AND AGAINST TOWNSHIPS.

1216. Suits by or against town — procedure. Whenever any controversy or cause of action exists between towns, or between a town and an individual or corporation, such proceeding shall be had either at law or equity for the purpose of trying and settling such controversy, and the same shall be conducted in the same manner, and the judgment or decree therein shall have the like effect, as in other actions or proceedings of a similar kind between individuals and corporations. [C. L. 804.]

1217. Town to sue in its own name. In all such actions and proceedings the town shall sue and be sued by its name, except where town officers are authorized by law to sue in their name of office for the benefit of the town. [C. L. 805.]

1218. Service of process. No town or town officer shall be required to appear, answer or plead to any such action at the first term of the court after the commencement thereof, when the same is commenced in the circuit court, unless the process aforesaid is served as herein directed at least thirty days before the commencement of the term. [C. L. 806.]

1219. Service on whom to be made. In legal proceedings against a town by name all papers shall be served on the chairman of the board of supervisors, and in case of his absence on the town clerk, and whenever any action or proceeding is commenced said chairman shall attend to the defense thereof, and lay before the electors of the town at the first town meeting a full statement of such proceedings, for their direction in regard to the defense thereof. [C. L. 807.]

1220. Jurisdiction. No action in favor of any town shall be brought before any justice of the peace residing in such town. [C. L. 808.]

1221. Recovery for trespass. Whenever any action is brought to recover a penalty imposed for any trespass committed on the lands belonging to the town, if it appears on the trial thereof that the actual amount of injury to such town lands in consequence of such trespass exceeds the sum of twelve dollars and fifty cents, then the amount of actual damage with cost of suit shall be recovered in said action, instead of any penalty for said trespass imposed by the town meeting, and such recovery shall be used as a bar to every other action for the same trespass. [C. L. 809.]

1222. Lands may be partitioned. Whenever by decree or decision in any action or proceeding brought to settle any controversy in relation to town commons or other lands, the common property of the town, or for the partition thereof, the rights of any town are settled and confirmed, the court in which such proceedings are had may partition such lands according to the rights of parties. [C. L. 810.]

1223. Payment of judgment. When a judgment is recovered against any town or against any town officers in an action prosecuted by or against them in their name of office, no execution shall be awarded or issued upon such judgment, but the same, unless reversed or stayed on appeal, shall be paid by the town treasurer upon demand and the delivery to him of the certified copy of the docket of the judgment, if there is sufficient money of such town in his hands not otherwise appropriated. If he fails to do so he shall be personally liable for the amount, unless the collection thereof is afterwards stayed upon appeal. If payment is not made within thirty days after the time fixed by law for the county treasurer to pay over to the town treasurer the money in his hands belonging to such town, levied for the purpose of paying such judgment, next after the rendition of such judgment, execution may be issued on such judgment, but only town property shall be liable thereon. [C. L. 811.]

1224. When judgment not satisfied. If judgment for the recovery of money is rendered against any town, and the judgment is not satisfied or proceedings thereon stayed by appeal or otherwise before the next annual meeting of said town, a certified copy of the docket of the judgment may be presented to said town at said annual meeting. The supervisors of the town shall thereupon cause the amount due on the judgment, with interest from the date of its recovery, to be added to the tax of said town and the same certified to the county auditor or county clerk and collected as other town taxes are collected. [C. L. 812.]

ARTICLE 17. TOWN CHARGES AND LEVIES.

1225. Town charges specified. The following shall be deemed town charges:

1. The compensation of town officers for services rendered their respective towns.

2. Contingent expenses necessarily incurred for the use and benefit of the town.

3. The moneys authorized to be raised by the vote of the town meeting for any town purpose.

4. Every sum directed by law to be raised for any town purpose; provided, that no tax for town purposes shall exceed the amount voted to be raised at the annual town meeting as provided in subdivision eighth, section seven hundred and sixteen. [C. L. 813.]

1226. Moneys, how levied. The moneys necessary to defray the town charges of each town shall be levied on the taxable property in such town, in the manner prescribed in the chapter for raising revenue and other money for state and county purposes and expenses. [C. L. 814.]

1227. Notice to county clerk of rate of levy. It shall be the duty of the township clerk immediately after the township board of supervisors have made the levy of taxes, or within three days thereafter, to notify the county clerk of the amount levied, who shall enter the same on the county tax list, to be collected by the county treasurer as county taxes are collected. [C. L. 815.]

ARTICLE 18. BOOKS AND PAPERS OF OUTGOING OFFICERS.

1228. Successor to receive records. Whenever the term of any supervisor, town clerk or assessor expires, and another person is appointed or elected to such office, such successor immediately after he enters upon the duties of his office shall demand of his predecessor all books and papers under his control belonging to such office. [C. L. 816.]

1229. In case of vacancy. Whenever either of the officers above named resigns, or the office becomes vacant in any way, and another person is elected or appointed in his stead, the person so elected shall make such demand of his predecessors or of any person having charge of such books and papers. [C. L. 817.]

1230. Oath by outgoing officer. Every person so going out of office, whenever thereto required pursuant to the foregoing provisions, shall deliver upon oath all records, books and papers in his possession or in his control, belonging to the office held by him, which oath may be administered by the officer to whom such delivery is made. [C. L. 818.]

1231. Demand for records in case of death. Upon the death of any of the officers enumerated, the successor of such officers shall make such demand as above provided, of the executors or administrators of such deceased officer, and such executors or administrators shall deliver upon like oath all records, books, papers or moneys in their possession or under their control, belonging to the office held by their testator or intestate. [C. L. 819.]

ARTICLE 19. GUIDE-POSTS.

1232. Provided by township. Every township shall in the manner provided herein erect and maintain guide-posts on the highways and other ways within the township, at such places as are necessary or convenient for the direction of travelers. [C. L. 820.]

1233. Report. The supervisors shall submit to the electors at every annual meeting a report of all the places at which guide-posts are erected and maintained within the town, and of all places at which in their opinion they ought to be erected and maintained. For each neglect or refusal to make such report they shall severally forfeit the sum of ten dollars. [C. L. 821.]

1234. Penalty for neglect. Upon the report of the supervisors the town shall determine the several places at which guide-posts shall be erected and maintained, which shall be recorded in the town records. A town which neglects or refuses to determine such places, and to cause a record thereof to be made, shall forfeit the sum of five dollars for every month during which it neglects or refuses so to do; and in such case upon any trial for not erecting or maintaining guide-posts reported to be necessary or convenient by the supervisors, the town shall be estopped from alleging that such guide-posts were not necessary or convenient. [C. L. 822.]

1235. Character of guide-posts. At each of the places determined by the town there shall be erected a substantial post of not less than eight feet in height, near the upper end of which shall be placed a board, and upon such board shall be plainly and legibly painted or otherwise marked the name of the next town or place, and such other town or place of note as the supervisors think proper, to which each of such roads lead, together with the distance or number of miles to the same; and also the figure of a hand with the forefinger thereof pointed towards the towns or places to which said roads lead; provided, that the inhabitants of any town may at their annual meeting agree upon some suitable substitute for such guide-posts. [C. L. 823.]

1236. Forfeiture for neglect to furnish. Every town which neglects or refuses to erect and maintain such guide-posts or some suitable sub-

stitute therefor shall forfeit annually the sum of five dollars for every guide-post which it so neglects or refuses to maintain, which sum may be sued for and collected by any person before any justice of the peace of the proper county, and the moneys so collected shall be paid into the town treasury for the benefit of the roads and bridges of the said town. [C. L. 824.]

ARTICLE 20. PUBLIC PLACES.

1237. Public places for posting notices. At the annual town meeting in each year the legal voters present at each meeting shall determine and designate three places in the town as public or the most public places of such town, and that all legal notices required to be posted in three public places or the most public places of a town shall be posted up at such places at least, and they shall make provision for the erection and maintenance of posts on which to post up notices as aforesaid in all places so designated, in which there is no sufficient natural convenience for that purpose. [C. L. 825.]

ARTICLE 21. POUNDS AND POUND MASTERS.

1238. Pounds located. Whenever the electors of any town determine at their annual town meeting to erect one or more pounds therein, the same shall be under the care and direction of such pound masters as are chosen or appointed for that purpose. [C. L. 826.]

1239. Discontinuing. The electors of any town may at any annual town meeting discontinue any pounds therein. [C. L. 827.]

1240. Fees of pound master — sales. The pound master is allowed the following fees, to wit: For taking into pound or discharging therefrom any horse, ass or mule, and all neat cattle, twenty cents each. For every sheep or lamb, ten cents each; and for every hog large or small ten cents; and twenty-five cents for keeping each twenty-four hours in pound. And the pound master has a lien on all such animals for the full amount of his legal charges and expenses, and shall be entitled to the possession of such animals until the same are paid; and if the same are not paid and said animals removed within four days after they are impounded, the said pound master shall give notice by posting the same in three of the most public places in said town that said animals (describing them) are impounded, and that unless the same are taken away and fees paid within fifteen days after the date of such notice he will sell the same at public vendue at the place where the town meetings of said town are usually held; and on the day designated in such notice the said pound master shall expose the said animals for sale and sell the same to the highest bidder in cash, for which service he shall

receive two per cent. of the purchase money for each animal. Out of the money realized from said sale the said pound master shall deduct all his legal fees and charges and pay the balance if any to the chairman of the town supervisors, at the same time giving to said supervisors an accurate description of the animals sold and the amount received by him for each animal, and shall take a receipt and duplicate therefor and file one of them with the town clerk; provided, that the said supervisors shall at any time within six months, upon sufficient proof from the owner of any animal so sold, pay to said owner the balance due as received from said pound master; but if said money is not claimed within that time then the sum so received shall be retained for the use of said town. [C. L. 828.]

ARTICLE 22. DEBTS AND BONDS.

GENERAL PROVISIONS.

1241. Limitation on indebtedness. No town has power to contract debts or make expenditures for any one year in a larger sum than the amount of taxes assessed for such year, without having been authorized by a majority of the voters of such township, and no town shall assess for township purposes more than ten mills on the dollar of taxable property for any one year. [C. L. 829.]

1242. Bonds, when and how issued. The board of supervisors of the organized townships of this state, or those that may hereafter be organized, are hereby authorized and fully empowered to issue the bonds or orders of their respective towns, with coupons attached, in such amounts and at such periods as they may be directed by two-thirds of the legal voters present and voting at any legally called town meeting held for that purpose; such bonds or orders to be payable in such amounts and at such times, not exceeding six years from date, as two-thirds of the legal voters present and voting at such meeting shall determine, with interest thereon not to exceed eight per cent. per annum payable annually, which bonds or orders and coupons shall be signed by the chairman of the board of supervisors and countersigned by the clerk of said town; provided, that nothing herein contained shall be construed to authorize the issuing of said bonds or orders unless the same shall have first been voted for by ballot by two-thirds of all the legal voters present and voting at any annual town meeting, or special town meeting called for that purpose, notices of which, particularly specifying the object for which such meeting was called, have been posted in at least three public places in said town for not less than ten days previous to the time of calling the same. [C. L. 830.]

1243. Must be sold at par. No bonds or orders issued under the authority of this act shall be issued or negotiated for less than par value,

nor shall said bonds or orders or the proceeds thereof be used or appropriated for any purpose whatever other than specified in this act. [C. L. 831.]

1244. Bond tax. See § 2299a.

BONDS FOR ROADS, DITCHES, ETC.

1245. Petition. Whenever a petition shall be presented to the board of supervisors of any of the organized towns in the state, or that may hereafter be organized, bearing the signatures of two-thirds of the legal voters of such township (of which fact that such petition bears the signature of said majority of such legal voters the last registered poll list of such town shall be prima facie evidence), praying for a certain amount of money to be raised, not to exceed five per centum of the taxable valuation of said town as shown by the last assessment roll, nor in any case more than five thousand dollars, for the construction of any public road or roads, ditch or ditches, embankments, levees, or any similar work over any lands within said township, the said supervisors shall issue and sell the bonds, with coupons attached, of such township, for and in the amount specified in such petition; said bonds to run not longer than twenty years, and to draw a rate of interest not exceeding ten per centum per annum payable annually. Said bonds shall not be sold or disposed of for less than their par value. Said town shall provide for the payment of the said bonds and the interest thereon by sufficient taxation to meet the same. [C. L. 833.]

1246. Funds, how used. The money obtained from the sale of said bonds shall be used under the direction of the supervisors of said town in the construction of the work for which the bonds were issued, and in the purchase of such tools and machinery, as shall have been prayed for in said petition, and any other that the supervisors may deem advisable for the prosecution of said work. [C. L. 834.]

1247. Bonds to be recorded. The bonds herein provided for shall be signed by the chairman of the board of supervisors of such town, and be countersigned by the town clerk, who shall file and record the petition upon which the said bonds were issued, and shall keep a record showing the action of the board of supervisors in the premises, and also a record showing the amount, date of issue, to whom issued, rate of interest and date of maturity of said bonds. [C. L. 835.]

1248. Funds, how disbursed. All money derived from the sale of such bonds shall be paid into the town treasury of such town, who shall pay the same out on the order of the chairman of the board of supervisors countersigned by the town clerk. [C. L. 836.]

ARTICLE 23. FREE LIBRARIES.

[For powers of townships to establish and maintain free libraries, see article 10, chapter 11, political code, 636 et seq.]

ARTICLE 24. MISCELLANEOUS.

1249. Officer to have no interest in contract. No town officer shall become a party to or interested directly or indirectly in any contract made by the board of which he may be a member; and every contract or payment voted for or made contrary to the provisions of this section is void; and any violation of this section hereafter committed shall be a malfeasance in office which will subject the officer so offending to be removed from office. [C. L. 837.]

1250. Election district. Each town organized under this chapter, or any law heretofore in force, constitutes an election district. [C. L. 838.]

1251. Incorporated city. Nothing in this chapter contained shall in any way apply to any portion of the territory which is embraced within the limits of any incorporated city; but each incorporated city shall have and exercise within its limits, in addition to its powers the same powers conferred by this chapter upon towns, in the manner prescribed by law. [C. L. 839.]

1252. Power of constable. Any constable in any organized township containing any village not incorporated, shall be a proper officer for arresting and detaining any person for disorderly conduct within the village arising from drunkenness or otherwise, without process first issuing, and any person deemed guilty of such disorderly conduct shall be taken before any justice of the peace of such township, and upon conviction thereof be fined in the sum of not less than five nor more than ten dollars and all costs arising from such complaint and trial. [C. L. 840.]

1253. Confinement of prisoners. Any township with any such village not incorporated, shall at the annual township meeting have power to vote any appropriations necessary for providing a place of confinement, and shall further add any such regulations necessary for carrying this into effect. [C. L. 841.]

1254. Notice to be given. Any township providing such place of confinement shall cause notice of the same to be published in the newspaper having the largest circulation in such township, if there be any, or cause the township clerk to post notice thereof in three of the most public places in said township. [C. L. 842.]

1255. Convicted person confined. Any person convicted under the preceding sections shall be confined in the calaboose until all fines and costs are paid, not less than one day nor more than ten days. [C. L. 843.]

CHAPTER 11.

CITIES AND TOWNS.

ARTICLE 1. INCORPORATION OF CITIES.

1256. Petition for incorporation. [Ch. 37, '90.] § 1. That any city now existing in this state under a special charter may become incorporated under this act in the manner following: Whenever one-eighth of the legal voters of such city voting at the last preceding municipal election shall petition the mayor and council thereof to submit the question as to whether such city shall become incorporated under this act to a vote of the electors in such city, it shall be the duty of such mayor and council to submit such question accordingly, and to appoint a time and place, or places, at which such vote may be taken, and to designate the persons who shall act as judges at such election; but such question shall not be submitted oftener than once in each year.

1257. Notice of election. [Ch. 37, '90.] § 2. The mayor of such city shall give at least ten days' notice of such election, by publishing a notice thereof in one or more newspapers within such city; but if no newspaper is published therein, then by posting at least five copies of such notice in each ward or voting precinct.

1258. Ballots — canvass of returns. [Ch. 37, '90.] § 3. The ballots to be used at such election shall be in the following form: "For city organization under general law," or "Against city organization under general law." The judges of such election shall make returns thereof to the city council, whose duty it shall be to canvass such returns and cause the result of such canvass to be entered upon the records of such city. If a majority of the votes cast at such election shall be for city organization under general law, such city shall thenceforth be deemed to be organized under this act; and the city officers then in office shall, thereupon, exercise the powers conferred upon like officers in this act until their successors shall be elected and qualified.

1259. All cities governed by this act. [Ch. 37, '90.] § 4. All cities now organized under the general laws of the state relating to the incorporation of cities are hereby made subject to the provisions of this act, and are required to conform thereto, and the city officials in office under and by virtue of such general laws may continue in office until the first Monday in May, eighteen hundred and ninety, and no longer.

1260. Courts take judicial notice. [Ch. 37, '90.] § 5. All courts in this state shall take judicial notice of the existence of cities organized under this act, and of the change of the organization of any city from its original organization to its organization under this act; and from the time of organization the provisions of this act shall be applicable to such city, and all laws in conflict therewith shall no longer be applicable. But all laws or parts of laws not inconsistent with the pro-

visions of this act shall continue in force and applicable to any such city, the same as if such change had not taken place.

1261. Bodies politic and corporate. [Ch. 37, '90.] § 6. Cities organized under this act shall be bodies politic and corporate, under the name and style of "City of (name)," and under such name may sue and be sued, contract and be contracted with, acquire and hold real and personal property for corporate purposes within and without the circuit of such city, have a common seal and change the same at pleasure, and exercise all the powers hereinafter conferred.

1262. Rights and property. [Ch. 37, '90.] § 7. All rights and property of every kind and description, which were vested in any municipal corporation under its former organization, shall be deemed and held to be vested in the same municipal incorporation upon its being incorporated under the provisions of this act; but no rights or liabilities, either in favor of or against such corporation, existing at the time of so becoming incorporated under this act, and no action or prosecution of any kind, shall be affected by such change, but the same shall stand and progress as if no change had been made; provided, that when a different remedy is given by this act which may properly be made applicable to any right existing at the time of such city so becoming incorporated under this act, the same shall be deemed cumulative to the remedies before provided, and used accordingly.

1263. Statement of the result of election to be made. [Ch. 37, '90.] § 8. The corporate authorities of any city which may become organized under this act shall, within three months after organization hereunder, cause to be filed in the office of the register of deeds, in the county in which such city is situated, a certified copy of the entry made upon the records of the city, of the canvass of the votes, showing the result of such election whereby such city became so organized, and such register of deeds shall record the same, and such corporate authorities shall also cause a like certificate to be filed in the office of the secretary of state, who shall file the same and keep a registry of cities organized under this act.

1264. Ordinances continue in force. [Ch. 37, '90.] § 9. All ordinances and resolutions in force in any city when it shall organize under this act, or are organized under the provisions of the general laws of this state, relating to the incorporation of cities, not inconsistent with the provisions of this act, and shall continue in full force and effect

until repealed or amended, notwithstanding such change of organization; and the making of such change of organization shall not be construed to effect a change in the legal identity as a corporation of such city.

ARTICLE 2. CLASSIFICATION.

1265. Classification. [Ch. 61, '99.] § 1. All cities in this state shall be and are hereby divided into three classes, according to the population of the same, as follows: All cities having ten thousand or more inhabitants, shall be cities of the first class. All cities having two thousand inhabitants and not exceeding ten thousand inhabitants shall be cities of the second class. All cities having less than two thousand inhabitants shall be cities of the third class.

1265a. Population ascertained. [Ch. 61, '99.] § 2. It shall be the duty of the city clerk, or city auditor of their respective cities, on or before the twentieth day of March in each year to file in his office his certificate, under seal, of the population of the city, which certificate shall be conclusive of such population and shall be determined in the following manner: He shall take the total vote cast for governor in his city at the last preceding general election, and multiply the same by five and the product thereof shall be the population of such city, for the purpose herein named. Provided, that in any city that was not a voting precinct by itself in the election for state officers, he shall take the last preceding vote for mayor in determining the population of said city.

1266. Duty of city auditor. [Ch. 143, '95; ch. 37, '90.] § 2. It shall be the duty of the city auditor of each city organized under this act on or before the twentieth day of March next succeeding the time when the same shall be so incorporated, and on the twentieth day of March in the year nineteen hundred, and every fifth year thereafter, to file in his office his certificate under seal of the population of his city, which certificate shall be conclusive of such population, and shall be determined in the following manner: He shall take the total vote cast for governor in his city at the next preceding general election and multiply the same by five and the population [product] thereof shall be the population of such city for the purposes herein named.

ARTICLE 3. MAYOR.

1267. Mayor. [Ch. 37, '90.] § 1. The chief executive officer of a city shall be a mayor, who shall be a citizen of the United States, a

qualified elector, reside within the city limits, and hold his office for two years and until his successor is elected and qualified.

1268. Vacancy. [Ch. 37, '90.] § 2. Whenever a vacancy shall happen in the office of the mayor, in cities belonging to the first or second class, when the unexpired term shall be three months or over from the date when the vacancy occurs, it shall be filled by an election, and when it is less than three months, the president of the council shall during the unexpired term be acting mayor, and possess all the powers of the mayor.

1269. Vacancy, how filled. [Ch. 128, '93.] § 1. When a vacancy occurs in the office of mayor in cities belonging to the third class, the president of the city council shall be acting mayor during the unexpired term, unless a special election shall be ordered.

1270. Vacant, when. [Ch. 37, '90.] § 3. If the mayor at any time during the term of his office shall remove from the limits of the city, his office shall thereby become vacant.

1271. Mayor presides. [Ch. 37, '90.] § 4. The mayor shall preside at all meetings of the city council, but shall not vote except in the case of a tie, when he shall give the casting vote.

1272. Mayor may remove from office. [Ch. 37, '90.] § 5. The mayor shall have power to remove any officer appointed by him, whenever he shall be of the opinion that the interests of the city demand such removal, but he shall report the reasons for such removal to the council at its next regular meeting.

Being required to report cause of removal of officer to council is no limitation upon the power of the mayor to remove. *State ex rel. Dickson v. Williams, Mayor et al.*, 6 S. D. 119; 60 N. W. Rep. 410.

1273. Same power as sheriff. [Ch. 37, '90.] § 6. He may exercise within the city limits the powers conferred upon sheriffs to suppress disorder and keep the peace.

1274. Release of prisoner. [Ch. 37, '90.] § 7. He may release any person imprisoned for violation of any city ordinance, and shall report such release, with the cause thereof, to the city council at its first session thereafter.

1275. Shall be governed by law and ordinances. [Ch. 37, '90.] § 8. He shall perform all such duties as are or may be prescribed by law or by the city ordinances, and shall take care that the laws and ordinances are faithfully executed.

1276. Authority to inspect. [Ch. 37, '90.] § 9. He shall have power at all times to examine and inspect the books, records, and papers of any agent, employee, or officer of the city.

1277. Annual report. [Ch. 37, '90.] § 10. The mayor shall, annually, and from time to time, give the council information relative to the affairs of the city, and shall recommend for their consideration such measures as he may deem expedient.

1278. Commander-in-chief. [Ch. 37, '90.] § 11. He shall have power, when necessary, to call on every male inhabitant of the city over the age of eighteen years, to aid in enforcing the laws and ordinances, and to call out the militia to aid in suppressing riots, and other disorderly conduct, or carrying into effect any law or ordinance subject to the authority of the governor, as commander-in-chief of the militia.

1279. Neglect of duty. [Ch. 37, '90.] § 12. In case the mayor or any other municipal officer shall at any time be guilty of a palpable omission of duty, or shall willfully and corruptly be guilty of oppression, malconduct or malfeasance in the discharge of the duties of his office, he shall be liable to indictment in any court of competent jurisdiction, and on conviction, shall be fined in a sum not exceeding one thousand dollars; and the court in which such conviction shall be had, shall enter an order removing such officer from office.

1280. Ordinance. [Ch. 37, '90.] § 13. He may appoint, by and with the advice and consent of the city council, immediately after such change of organization, one or more competent persons to prepare and submit to the city council, for their adoption or rejection, an ordinance in revision of the ordinances of such city, the compensation of such reviser or revisers to be determined and fixed by the city council and paid out of the city treasury.

1281. Approve or veto. [Ch. 37, '90.] § 14. He shall have power to sign or veto any ordinance or resolution passed by the council, and the power to veto any part of an ordinance or resolution appropriating money.

1282. Appointment of policemen. [Ch. 37, '90.] § 15. He shall have power to appoint any number of policemen which he and a majority of the aldermen may deem necessary to preserve the peace of the city, and shall appoint one of the number as chief of police. Which appointment, and the appointment of policemen, shall be subject to the approval of a majority of the aldermen elect.

ARTICLE 4. CITY COUNCIL.

1283. City council. [Ch. 37, '90.] § 1. The city council shall consist of the mayor and aldermen.

1284. Number of aldermen. [Ch. 37, '90.] § 2. The number of aldermen shall be as follows: In cities not exceeding two thousand inhabitants, six aldermen; exceeding two thousand inhabitants, but not

exceeding ten thousand inhabitants, eight aldermen; exceeding ten thousand, and not exceeding fifteen thousand, twelve aldermen; and two additional aldermen for every ten thousand of inhabitants over fifteen thousand.

1285. Term of office. [Ch. 37, '90.] § 3. Aldermen shall hold their office for the term of two years and until their successors are elected and qualified.

1286. Vacancy. [Ch. 37, '90.] § 4. If any vacancy shall occur in the office of alderman by death, resignation, removal or otherwise, such vacancy shall be filled by election.

1287. Who may serve as aldermen. [Ch. 37, '90.] § 5. No person shall be eligible to the office of alderman unless he shall be a qualified elector, and reside within the ward for which he is elected; nor shall he be eligible if he is in arrears in the payment of any tax or other liability due to the city, nor shall he be directly or indirectly interested in any contract whatever to which the city is a party; nor shall he be eligible if he shall have been convicted of malfeasance, bribery, or other corrupt practices or crimes; nor shall he be eligible to any office, the salary of which is payable out of the city treasury, if at the time of his appointment he shall be a member of the city council; nor shall any member of the city council at the same time hold any office under the city government; nor shall he directly or indirectly, individually or as a member of a firm engaged in any business transaction (other than official) with such city through its mayor, or any of its authorized boards, agents or attorneys, whereby any money is to be paid directly or indirectly out of the treasury to such member or firm.

1288. City council to be judge. [Ch. 37, '90.] § 6. The city council shall be judge of the election and qualification of its own members.

1289. Powers of city council. [Ch. 37, '90.] § 7. It shall determine its own rules of proceeding; punish its members for disorderly conduct, and with the concurrence of two-thirds of the aldermen elect may expel a member, but not a second time for the same offense; provided, that any alderman who shall have been convicted of bribery shall thereby be deemed to have vacated his office.

1290. Quorum. [Ch. 37, '90.] § 8. A majority of the aldermen elected shall constitute a quorum to do business, but a smaller number may adjourn from time to time and may compel the attendance of absentees under such penalties as may be prescribed by ordinance.

1291. Meetings. [Ch. 37, '90.] § 9. The city council shall hold its regular meetings on the first Monday of each and every month, and may prescribe by ordinance the manner in which special meetings thereof may be called, and may by ordinance change the day of its regular monthly meeting.

1292. President and vice-president. [Ch. 37, '90.] § 10. It shall, at the first regular meeting after the annual election in each year, and after the qualifications of the newly elected aldermen, proceed to elect from one of its own members a president and vice-president, who shall hold their respective offices for the municipal year. The president of the council shall, in the absence of the mayor, be presiding officer of the council, and shall, during the absence of the mayor from the city or his temporary disability, be acting mayor and possess all the powers of the mayor. In the absence or disability of the mayor and president of the council, then the vice-president shall perform the duties of the mayor and president of the council.

1293. Meetings to be public. [Ch. 37, '90.] § 11. It shall sit with open doors and shall keep a journal of its own proceedings.

1294. Manner of voting. [Ch. 37, '90.] § 12. The yeas and nays shall be taken upon the passage of all ordinances, and for the passage of any ordinance it shall require the affirmative vote of a majority of all the aldermen elect, and any and all propositions to create any liability against the city, or for the expenditure or appropriation of its money, and in all other cases at the request of any member, which shall be entered on the journal of its proceedings, and the concurrence of a majority of all the aldermen elected in the city council shall be necessary to the passage of any such ordinance or proposition; provided, it shall require a two-thirds vote of all the aldermen elected to sell any city or school property.

1295. Reconsideration of vote. [Ch. 37, '90.] § 13. No vote of the city council shall be reconsidered or rescinded at a special meeting, unless at such special meeting there be present as large a number of aldermen as were present when such vote was taken.

1296. Action upon report of committee. [Ch. 37, '90.] § 14. Any report of a committee of the council shall be deferred for final action thereon to the next regular meeting of the council after the report is made upon the request of any two aldermen present.

1297. Jurisdiction. [Ch. 37 '90.] § 15. The city council shall also have jurisdiction in and over all places within one-half mile of the city limits, for the purpose of enforcing health and quarantine ordinances and regulations thereof.

1298. Passage of ordinances — veto. [Ch. 37, '90.] § 16. All ordinances shall be read twice, and there shall be at least one week intervene between the first and second reading, and, after thus being passed by the city council, shall before they take effect, be deposited in the office of the city auditor for the approval of the mayor; and if the mayor approves thereof, he shall sign the same, and such as he shall not ap-

prove he shall file with the auditor within ten days with his objections thereto, in writing, and his objections shall be considered at the next meeting of the city council. Such veto may extend to any one or more items or appropriations contained in any ordinance making an appropriation, or to the entire ordinance, and in case the veto only extends to a part of such ordinance, the residue thereof shall take effect and be in force. But in case the mayor shall fail to return any ordinance with his objections thereto, by the time aforesaid, he shall be deemed to have approved such ordinance and the same shall take effect accordingly.

Provided, That upon the return of any ordinance by the mayor, the vote by which the same was passed may be reconsidered by the council; and if, after such reconsideration, two-thirds of all the members elected to the city council shall agree by yeas and nays to pass the same, it shall go into effect, notwithstanding the mayor may refuse to approve thereof. The vote to pass the same over the mayor's veto, shall be taken by yeas and nays and entered on the journal;

Provided, further, That all ordinances so passed by the council and signed by the mayor, or passed over the mayor's veto, shall be published at least once in the official newspaper of the city, and shall become operative immediately upon such publication. The city auditor shall record in a book kept for that purpose, together with the affidavit of the publisher, all such ordinances so passed and published; and said book, or certified copy of the ordinances as so recorded, shall be received as evidence in all courts and places without further proof, or if printed in book or pamphlet form by the authority of the city council, they shall be so received and styled: "Be it ordained by the city council."

1298a. Publication when no newspaper printed in English. [Ch. '87, '91.] § 1. That in all incorporated towns, villages and cities incorporated under any general laws or special charter where no newspaper of general circulation is printed and published in the English language, any publication which now is or which may hereafter be required by law to be made by such incorporated town, village or city or by or under the authority thereof, may be made in any newspaper of general circulation published in the county wherein such incorporated town, village or city is situated, and such publication when made as provided by this act, shall have the same validity as if the same were made in a newspaper published within the corporate limits of such incorporated town, village or city.

ARTICLE 5. POWERS OF CITY COUNCIL.

1299. General powers of city council. [Ch. 37, '90.] § 1. The city council shall have the following powers:

1. To control the finances and property of the corporation.
2. To appropriate money for corporate purposes only and provide for the payment of debts and expenses of the corporation.

3. To levy and collect taxes for general and special purposes on real and personal property.

4. To fix the amount, terms and manner of issuing and revoking licenses.

5. To borrow money on the credit of the corporation for corporate purposes, and issue bonds therefor, in such amounts and forms, and on such conditions as it shall prescribe, but shall not become indebted in any manner or for any purpose to any amount including existing indebtedness, in the aggregate to exceed five (5) per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness; and before or at the time of incurring any indebtedness, shall provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years after contracting the same; provided, no bonds shall be issued by the said city council under the provisions of this act either for general or special purposes unless at an election after twenty days' notice in a newspaper published in the city, stating the purpose for which said bonds are to be issued and the amount thereof, the legal voters of said city by a majority shall be determined in favor of issuing said bonds.

6. To issue bonds in place of, or to supply means to meet maturing bonds, or for the consolidation of funding the same.

7. To lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks and public grounds and vacate the same.

8. To plant trees on the same.

9. To regulate the use of the same.

10. To prevent and remove the obstructions and encroachments upon the same.

11. To provide for the lighting of the same.

12. To provide for the cleansing of the same.

13. To regulate the openings therein for the laying of gas or water mains and pipes, and the building and repairing of sewers, tunnels and drains, and erecting gas or electric lights;

Provided, however, That any company heretofore organized under the general laws of this state, or any association of persons organized or which may be hereafter organized for the purpose of manufacturing illuminating gas or electricity to supply cities, or the inhabitants thereof, with the same, shall have the right by consent of the city council (subject to existing rights), to erect gas or electric light works, and lay down pipes, or string wires on poles, in the streets or alleys of any city in this state subject to such regulations as such city may by ordinance impose.

14. To regulate the use of sidewalks and all structures thereunder; and to require the owner or occupant of any premises to keep the sidewalks in front of, or along the same, free from snow and other obstruction.

15. To regulate and prevent the throwing or depositing of ashes, offal, dirt, garbage, or any offensive matter into any street, avenue, alley, public ground, or into any stream of water within the city limits or forming the boundary thereof, and to prevent injury to any street, avenue, alley or public ground.

16. To provide for and regulate crosswalks, curbs and gutters.

17. To regulate and prevent the use of streets, sidewalks, and public grounds for signs, sign posts, awnings, telegraph or telephone poles, horse troughs, racks, posting hand-bills and advertisements.

18. To regulate and prohibit the exhibition or carrying of banners, placards, advertisements or hand-bills in the streets or public grounds, or upon the sidewalks.

19. To regulate and prevent the flying of flags, banners or signs across the streets or from houses.

20. To regulate traffic and sales upon the streets, sidewalks and public places.

21. To regulate the speed of horses and other animals, vehicles, cars and locomotives within the limits of the corporation.

22. To regulate the numbering of houses and lots.

23. To name and change the name of any street, avenue, alley or other public place.

24. To permit, regulate or prohibit the locating, constructing or laying a track of any horse railroad in any street, alley, or public place; but such permission shall not be for a longer time than twenty years.

25. To provide for and change the location, grade and crossing of any railroad.

26. To require railroad companies to fence their respective railroads, or any portion of the same, and construct cattle guards, crossings of streets and public roads, and viaduct or overhead crossings, and keep the same in repair within the limits of the city.

[Ch. 146, '95.] 27. To require railroad companies to keep flagmen or maintain lights at railroad crossings of streets, and provide protection against injury to persons and property; to compel such railroad to raise or lower the railroad tracks to conform to any grade which may at any time be established by such city, and where such tracks may run lengthwise of any street, alley or highway, to keep their railroad tracks on a level with the street surface, and so that such tracks may be crossed

at any place on such street, alley or highway; to compel and require railroad companies to make and keep open and keep in repair ditches, drains, sewers and culverts along and under their railroad tracks so that filthy or stagnant pools of water cannot stand on their grounds or right of way, and so that the natural or artificial drainage of adjacent property shall not be impeded.

28. To construct and keep in repair bridges, viaducts and tunnels, and to regulate the use thereof.

29. To construct and keep in repair culverts, drains, sewers, catch-basins, man-holes and cess-pools, and to regulate the use thereof.

30. To license, tax, regulate, suppress, and prohibit hawkers, peddlers, pawnbrokers, keepers of ordinaries, theatricals and other exhibitions, shows and amusements, ticket scalpers, and employment agencies, and to regulate or license the manufacture and sale of cigars, tobacco, cigarettes, snuff, soda water, mineral water, and all light drinks of every kind, the manufacture and sale of which is not prohibited by the laws of the state.

31. To license, tax and regulate hackmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen, watermen, and all others pursuing like occupations, and to prescribe their compensation.

32. To license, regulate, tax and restrain runners for stages, cars, public houses, or other things or persons.

33. To license, regulate, tax or prohibit and suppress billiards, bagatelle, pigeon hole or any other tables or implements kept or used for a similar purpose in any public resort, pin-alleys and ball-alleys.

[Ch. 142, '95.] 34. To suppress bawdy or disorderly houses, houses of ill fame or assignation within the limits of the city and within one mile of the outer boundaries of the same, and also to suppress gaming and gambling houses, lotteries and all fraudulent devices and practices for the purpose of gambling or obtaining money or property, and to prohibit the sale or exhibition of obscene or immoral publications, prints, pictures or illustrations; and the provisions of this subdivision, and the power herein granted shall extend to all cities in this state, whether incorporated under a special charter or the general laws.

35. To establish markets and market houses, and to provide for the regulation and use thereof.

36. To provide for place and manner of sale of meats, poultry, fish, butter, cheese, lard, vegetables, and all other provisions, and regulate the selling of the same.

37. To regulate the sale of bread in the city and prescribe the weight and quality of the bread in the loaf

38. To provide for and regulate the inspection of meats, poultry, fish, butter, cheese, lard, vegetables, flour, meal and other provisions.

39. To regulate the inspection, weighing and measuring of lumber, firewood, coal, hay, and any article of merchandise.

40. To provide for the inspection and sealing of weights and measures.

41. To enforce the keeping of proper weights and measures by venders.

42. To regulate the construction, repairs and use of vaults, cisterns, areas, hydrants, pumps, sewers and gutters.

43. To construct and maintain water works and make **all the needful** rules and regulations concerning the distribution and use of water supplied by such water works.

44. To purchase, condemn, hold and improve public parks within or without the limits of the city, and provide for the protection, improvement and preservation of the same.

45. To appropriate damage, take and condemn any property of any corporation or person for the purpose of establishing, changing, opening, widening, extending or grading any public street or alley.

46. To regulate places of amusement.

47. To prevent intoxication, fighting, quarreling, dog fights, cock fights, and all disorderly conduct.

48. To regulate partition fences and party walls.

49. To prescribe the thickness, strength and manner of constructing stone, brick and other buildings, and construction of fire escapes therein.

50. To prescribe the limits within which wooden buildings shall not be erected or placed or repaired without permission, and to direct that all and any buildings within said limits (which shall be known as the fire limits), when the same shall have been damaged by fire, decay, or otherwise, to the extent of fifty per cent. of the value, shall be torn down or removed, and to prescribe the manner of ascertaining such damage.

51. To prevent dangerous construction and condition of chimneys, fire places, hearths, stoves, stove pipes, ovens, boilers, and apparatus used in and about any building and manufactory, and to cause the same to be removed or placed in a safe condition where considered dangerous; to regulate and prevent the carrying on of manufactories dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places, and cause all such buildings and enclosures as may be in a dangerous state to be put in a safe condition.

52. To erect engine houses and provide fire engines, hose carts, hooks and ladders, and other implements for prevention and extinguishment of fires, and provide for the use and management of the same by voluntary or paid fire companies or otherwise.

53. To regulate and prevent the storage of gun powder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitro-glycerine, petroleum, or any of the products thereof, and other combustible or explosive material, and the use of lights in stables, shops and other places, and the building of bon-fires; also to regulate and restrain the use of fire works, fire crackers, torpedoes, roman candles, sky rockets, and other pyrotechnic displays.

54. To provide for the inspection of steam boilers.

55. To establish and erect a city jail, house of correction, and work house for the confinement and reformation of disorderly persons, vagrants, tramps, and idle persons, and persons convicted of violating any city ordinance, and make rules and regulations for the government of the same, and appoint necessary jailors and keepers.

56. To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law, and with the consent of the county board of commissioners, and to regulate the police of the city, and pass and enforce all necessary ordinances.

57. To prevent and suppress riots, routs, affrays, noises, disturbances, and disorderly assemblies in any public or private place.

58. To prohibit and punish cruelty to animals.

59. To restrain and punish vagrants, mendicants and prostitutes.

60. To declare what shall be a nuisance, and to abate the same and impose fines upon parties who may create, continue, or suffer nuisances to exist.

61. To appoint a board of health and prescribe its powers and duties.

62. To erect and establish hospitals, and medical dispensaries, and to control and regulate the same.

63. To do all acts, make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.

64. To establish and regulate cemeteries within or without the corporation, and acquire lands therefor by purchase or otherwise, and cause cemetery to be removed and prohibit their establishment within one mile of the corporation.

65. To regulate, restrain, and prohibit the running at large of horses, cattle, swine, sheep, goats, geese and dogs, and to impose a tax or license on dogs.

66. To direct the location and regulate the management and construction of packing houses, renderies, bone factories, slaughter houses, soap factories, foundaries, breweries, distilleries, livery stables, and blacksmith shops, within, or within one mile of the limits of the corporation.

67. To prohibit any offensive or unwholesome business, or establishment within, or within one mile of the limits of the corporation.

68. To compel the owner of any grocery, cellar, stable, pig sty, privy, sewer or other unwholesome or nauseous house or place, to cleanse, abate or remove the same, and to regulate the location thereof.

69. To provide for the taking of the city census; but no city census shall be taken oftener than once in three years.

70. To provide for the erection and care of all public buildings necessary for the use of the city.

71. The city council shall have power by condemnation or otherwise to extend any street, alley or highway over or across or to construct any sewer under or through any railroad track, right of way, or land of any railroad company (within the corporate limits), but where no compensation is made to such railroad company, the city shall restore such railroad track, right of way or land to its former state, or in a sufficient manner not to have impaired its usefulness.

72. The city council shall have no power to grant the use of, or right to lay down any railroad tracks in any street of the city, to any steam or horse railroad company except on a petition of the owners of the land representing more than one-half of the frontage of the street, or so much thereof as is sought to be used for railroad purposes.

[Ch. 124, '93.] Provided, that such grant or right may be given to occupy any street, a portion of which is bordered by the right-of-way of an existing railroad, on an affirmative vote of at least two-thirds of the members elect of the council.

73. To prevent and regulate the rolling of hoops, playing of ball, flying of kites, or any other amusement or practice having a tendency to annoy persons passing in the street or on the sidewalks, or to frighten teams and horses.

74. To regulate and prohibit the keeping of any lumber yard and the placing or piling or selling any lumber, timber, wood, or other combustible material within the fire limits of the city.

75. To provide by ordinance that all the paper, printing, stationery, blanks, fuel, and all the supplies needed for the use of the city shall be furnished by contract let to the lowest responsible bidder.

76. To tax, license and regulate second hand and junk stores, and to forbid the purchasing and receiving from minors without the written consent of their parents or guardians any article whatever, and to prescribe punishment for any violation hereof.

77. To purchase, erect, lease, rent, manage and maintain any system or part of system of water works, hydrants, and supply of water, telegraphing fire signal or fire apparatus that may be of use in the prevention or extinguishment of fires, and to pass all ordinances, penal or

otherwise, that shall be necessary for the full protection, maintenance, management and control of the property so leased, purchased or erected.

78. To redistrict the city into wards, and describe the boundaries thereof whenever the population is large enough to require two aldermen or more than are in the council; provided, that in redistricting the city into wards, it shall be done by ordinance and the wards made as nearly equal in population as possible; and provided, further, that no change shall be made until after the next general election in said city after the passage of this act, and no such change shall take effect until the next general election thereafter, except and it is hereby expressly provided that the city council of any city may proceed to redistrict the city into wards where an ordinance has been introduced for that purpose under the existing laws prior to the twenty-sixth day of February, eighteen hundred and ninety.

79. To pass all ordinances, rules, and make all regulations, proper or necessary to carry into effect the powers granted to the cities, with such fines or penalties as the city council shall deem proper; provided, no fine or penalty shall exceed one hundred (100) dollars, and no imprisonment shall exceed three months for one offense.

City justice must be elected. If appointed by the city council has no authority and no judicial powers. *People v. Briggs*, 1 Dak. 362; 46 N. W. Rep. 451.

Ordinance prescribing that before any person can erect any building or addition thereto, within the city limits, must first apply to and receive from the city building inspector a permit, which inspector may refuse to grant it, and from whose decision there is no appeal, is unconstitutional and void. *City of Sloux Falls v. Kirby*, 6 S. D. 625; 60 N. W. Rep. 156.

An abutting owner who also holds fee of the street, has a right to construct and occupy an area therein subject to the public easement. *Dell Rapids Mer. Co. v. City of Dell Rapids*, 75 N. W. Rep. 898.

City is liable for damages resulting to an area from the negligence of the city in constructing sewers and drains. *Id.*

The power of a city to construct water-works is not a necessary incident, but must be derived directly from the legislature of the State. *Huron Water-Works Co. v. City of Sharon*, 7 S. D. 9; 62 N. W. Rep. 975.

Where city has authority to drain, improve, keep in repair and prevent obstructions of its streets, it has power to straighten a large stream of water running zig-zag through the city. *McGuire v. City of Rapid City*, 6 Dak. 346; 43 N. W. Rep. 706.

To recover penalty under city ordinance for an act not made criminal under the laws of this State, is a civil action and an appeal will lie. *City of Sloux Falls v. Kirby*, 6 S. D. 62; 60 N. W. Rep. 156.

Officers possess such powers as are granted by express words, and those necessarily implied or indispensable to the object and purpose of those declared. Doubt is resolved against the corporation. *Treadway v. Schnauber et al.*, 1 Dak. 227; 46 N. W. Rep. 464.

1300. City council to tax transient merchants. [Ch. 123, '93.] § 2. It shall be the duty of the city council to tax, license and regulate transient merchants, auctioneers, transient bankrupt and auction stores, and all stores of like nature, also gift enterprises and every business or avocation of a like character. ▲

1301. Not applicable, when. [Ch. 123, '93.] § 3. This act shall not be construed to apply to any person retailing the productions which can be shown to be his or her own manufacture or production.

1302. Actions. [Ch. 37, '90.] § 2. All actions brought to recover any fine or to enforce any penalty, under any ordinance of any city, shall be brought in the corporate name of the city as plaintiff; and no prosecution, recovery or acquittal, for the violation of any such ordinance, shall constitute a defense to any other prosecution of the same party for any other violation of any such ordinance, although the different causes of action existed at the same time, and if united would not have exceeded the jurisdiction of the court or justice of the peace.

1303. Fines. [Ch. 37, '90.] § 3. All fines and forfeitures for the violation of ordinances, when collected, and all moneys collected for license or otherwise, shall be paid into the treasury of the corporation at such times and in such manner as may be prescribed by ordinance.

1304. Summons. [Ch. 37, '90.] § 4. In all actions for the violation of any ordinance, the first process shall be a summons; provided, however, that a warrant for the arrest of the offender may issue in the first instance upon the affidavit of any person that any such ordinance has been violated; and that the person making the complaint has reasonable grounds to believe that the party charged is guilty thereof; and any person arrested upon any such warrant shall without any unnecessary delay be taken before the proper officer to be tried for the alleged offense. Any person upon whom any fine or penalty shall be imposed may upon order of the court before whom the conviction is had, be committed to the county jail, city prison, work house, house of correction or other place provided by the city for the incarceration of offenders until such fine, penalty and costs shall be fully paid; provided, that no such imprisonment shall exceed three months for any one offense. The city council shall have power to provide by ordinance that every person so committed shall be required to work for the corporation at such labor as his or her strength will permit, not exceeding ten hours each working day; and for such work, the person so employed, to be allowed, exclusive of his or her board, one dollar and twenty-five cents for each day's work, on account of such fine and costs.

1305. Police justice. [Ch. 37, '90.] § 5. The police justice shall have exclusive jurisdiction in all cases arising under the provisions of this act, or any ordinance passed in pursuance thereof.

1306. Service of process. [Ch. 37, '90.] § 6. Any constable or sheriff in the county may serve any process, or make any arrests authorized to be made by any city officer.

ARTICLE 6. CITY OFFICERS.

1307. City officers. [Ch. 37, '90.] § 1. There shall be elected in all cities organized under this act the following officers: A mayor, two aldermen from each ward, a city treasurer, a police justice, and a city justice of the peace.

1308. Term of office. [Ch. 37, '90.] § 2. The elective officers of a city shall hold their respective offices for two years, and until their successors are elected and qualified; provided, that at the election to be held on the third Tuesday of April next all cities now organized under the general laws of the state shall elect a mayor, two aldermen from each ward, a city treasurer, a police justice and a city justice of the peace; and the term of office of all city officials holding office under and by virtue of the general laws of this state relating to the incorporation of cities, prior to the passage of this act, shall terminate on the first Monday of May, eighteen hundred and ninety.

1309. Appointive officers. [Ch. 37, '90.] § 3. There shall be appointed by the mayor, with the approval of the city council, a city auditor, not to exceed three city assessors, a city attorney, and a city engineer, and such other officers as may by the city council be deemed necessary or expedient.

1310. Terms of office. [Ch. 37, '90.] § 4. The appointive officers of a city shall hold their respective offices for one year and until their successors are appointed and qualified; provided, that the term of office of all the appointive officers of any city organized under chapter seventy-three of the laws enacted by the seventeenth legislative assembly of the state of South Dakota, and the amendments thereto, shall terminate on the first Monday of May next.

1311. Oath of office. [Ch. 37, '90.] § 5. All officers of any city, whether elected or appointed, shall, before entering upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the state of South Dakota, and that I will faithfully discharge the duties of the office of according to the best of my ability." Which oath or affirmation so subscribed shall be filed in the office of the city auditor; and all such officers, except aldermen, shall, before entering upon the duties of their respective offices, execute a bond with security, to be approved by the city council, payable to the city, in such penal sum as may by resolution or ordinance be directed, conditioned for the faithful performance of the duties of the office and the payment of all money received by such officer, according to law and the ordinance of

such city; provided, however, that in no case shall the mayor's bond be fixed for a less sum than three thousand (\$3,000) dollars; nor shall the treasurer's bond be fixed at a less sum than the amount of the estimated tax and special assessments for the current year, which bonds shall be filed with city auditor (except the bond of the city auditor, which shall be filed with the treasurer).

1312. Commissions — delivery to successor. [Ch. 37, '90.] § 6. All officers elected or appointed under this act, except the city auditor, alderman or mayor, shall be commissioned by warrant under the corporate seal, signed by the auditor and mayor or president of the city council. The mayor shall issue a certificate of appointment, under the seal of the corporation, to the auditor thereof, and any person having been an officer of the city shall, within five days after notification and request, deliver to his successor in office all property, books and effects, of every description in his possession, belonging to the city or appertaining to his said office; and upon his refusal to do so, shall be liable for all the damages caused thereby and to such penalty as may by ordinance be prescribed.

1313. Nine months' residence. [Ch. 37, '90.] § 7. No person shall be eligible to any office who is not a qualified elector of the city, and who shall not have resided therein at least nine months next preceding his election or appointment; nor shall any person be eligible to any office who is a defaulter to the corporation.

[Ch. 88, '91.] " Provided, that the city attorney and city engineer need not be qualified electors of or residents of the city."

1314. Officers must be personally disinterested. [Ch. 37, '90.] § 8. No officer shall be directly or indirectly interested in any contract, work or business of the city, or the sale of any article, the expense, price or consideration of which is paid from the treasury, or by any assessment levied by any act or ordinance, nor in the purchase of any real estate or other property belonging to the corporation, or which shall be sold for taxes or assessment, or by virtue of legal process at the suit of said corporation.

1315. Certain officers debarred from holding other offices. [Ch. 37, '90.] § 9. No mayor, alderman, city auditor or treasurer, shall hold any other office under the city government during his term of office.

1316. Mayor administer oaths. [Ch. 37, '90.] § 10. The mayor and auditor of any city shall have power to administer oaths and affirmations upon all lawful occasions.

ARTICLE 7. CITY AUDITOR.

1317. City auditor to be recorder. [Ch. 37, '90.] § 1. The city auditor shall keep his office at the place of meeting of the city council, or some other place convenient thereto, as the council may direct; he shall keep the corporate seal, and all the papers and records of the city, and keep a record of the proceedings of the city council, whose meetings it shall be his duty to attend; copies of all papers filed in his office, and transcripts from all records of the city council certified by him under the corporate seal, shall be evidence in all courts as if the original were produced. He shall draw and countersign all orders on the treasurer in pursuance of any order or resolution of the city council, and keep a full and accurate account thereof in books provided for that purpose.

1318. Financial report. [Ch. 37, '90.] § 2. The city auditor shall report to the city council on the first days of March and September of each year the receipts and expenses and financial condition of the city, which report shall be published, within thirty days thereafter, in the official paper of the city, or such other paper as the council may direct. He shall make and keep a list of outstanding city bonds, to whom issued, for what purpose, when and where payable, and the rate of interest they respectively bear, and recommend such action to the city council as will secure the punctual payment of the principal and interest of such bonds. He shall report annually, on or before the first day of September, to the city council, an estimate of the expenses of the city, and likewise the revenue necessary to be raised for the current year, and the fiscal year shall commence on the first day of September.

1319. Further duties of city auditor. [Ch. 37, '90.] § 3. He shall make, or cause to be made, estimates of the expenses of any work to be done by the city, countersign all contracts made in behalf of the city, and certificates of work authorized by any committee of the city council or by any city officer. And every contract made in behalf of the city, or to which the city is a party, shall be void unless signed by the auditor. The city auditor shall keep regular books of account, in which he shall enter all indebtedness of the city, and which at all times show the financial condition of the city, the amount of bonds, orders, certificates, or other evidences of indebtedness, issued by the city council; the amount of all bonds, orders, certificates, or other evidences of indebtedness, which have been redeemed, and the amount of each outstanding; to countersign all bonds, orders, or other evidences of indebtedness of the city, and to keep accurate accounts thereof, stating to whom and for what purpose issued, and the amount thereof; to keep account with all receiving and disbursing officers of the city, showing the amount they have received from the different sources of revenue, and the amount which

they have disbursed under the direction of the city council. He shall keep a list of all certificates issued for work or any other purpose, and before the levy by the city council of any special tax upon the property in the city, or any part thereof, shall report to the city council a schedule of all parcels, lots or parcels of lands, which may be subject to the proposed special tax or assessment, and also the amount of such special tax or assessment which it may be necessary to levy on such lots or parcels of lands, which said schedule shall be certified by the affidavit of the auditor, and shall be prima facie evidence of the facts stated therein in all cases wherein the validity of such special tax or assessment shall come in question. The city council shall, if from such reports they deem such special tax legal and just, cause the same to be levied in pursuance of the provisions of this act. If before the first day of June of any year the amount expended, or to be expended, chargeable to any city fund (adding thereto the current expenses estimated for the remainder of the fiscal year, and chargeable to such fund), shall be equal to three-fourths of the tax authorized to be raised or revenue estimated for such fund, and shall report at once the same to the city council, and he shall not countersign any contract chargeable to such fund until the amount of taxes actually collected be ascertained; and during the remainder of the fiscal year he shall not countersign any contract the expenses of which shall exceed the revenue actually collected for the fund to which such expenses are properly chargeable. The auditor shall examine all reports, books, papers, vouchers and accounts of the city treasurer, and from time to time perform such other duties as the city council may direct. All claims and demands against the city, before they are allowed by the city council, shall be audited and adjusted by the auditor, and he shall keep a record of his acts and doings, and keep a book, in which he shall enter all contracts, with an index thereto; such books shall be open to the inspection of all parties interested.

ARTICLE 8. CITY ATTORNEY AND TREASURER.

1320. City attorney's duties. [Ch. 37, '90.] § 1. The city attorney shall perform all professional services incident to his office, and when required shall furnish opinion upon any subject submitted to him by the city council or its committees.

1321. City treasurer. [Ch. 37, '90.] § 2. The city treasurer shall receive all moneys belonging to the city including all taxes, license moneys, and fines; and collect all special assessments as hereinafter provided, and keep accurate and detailed account thereof in such manner as provided in this act, or as the city council may from time to time direct. He shall have a settlement with the auditor at the end of every

month, and turn over all warrants, interest coupons, bonds or other evidences of indebtedness of the city which may have been redeemed by him during the month, taking the receipt of the auditor therefor, and all such warrants, orders or other evidences of indebtedness shall be canceled by him and have written or stamped thereon the date of their payment or redemption.

1322. Moneys to be paid out on warrants. [Ch. 37, '90.] § 3. Unless otherwise ordered by the council or provided for in this act, no moneys shall be paid out by the treasurer, except upon the warrant of the mayor, countersigned by the auditor, except bonds and interest coupons, which when due may be paid upon presentation, or in case the same are payable at some other place than the city organized under this act, then the money for their redemption shall be sent to the place where they are payable in time to meet such payment when due.

1323. Payment of warrants. [Ch. 37, '90.] § 4. All warrants shall be paid in the order in which they are presented, and the treasurer shall note upon the back of each warrant presented to him, the date of such presentation, and when payment is made, the date of such payment.

Provided, That any warrant shall be paid by the treasurer in case a sufficient amount of money shall remain in the treasury to pay all warrants presented previous to such warrant. Any violation of the provisions of this section on the part of the treasurer shall be sufficient ground for his removal from office by the mayor and council.

1324. Funds kept separate. [Ch. 37, '90.] § 5. The treasurer shall keep a separate account of such fund or appropriation, and the debts and credits belonging thereto.

1325. Receipt for payment. [Ch. 37, '90.] § 6. The treasurer shall give every person paying into the city treasury a duplicate receipt therefor, specifying the date of payment, and upon what account paid; and he shall also file copies of such receipts with the auditor at the date of his monthly report.

1326. City funds kept separate from other funds. [Ch. 37, '90.] § 7. The treasurer shall keep all moneys in his hands belonging to the city separate and distinct from his own moneys; and he is expressly prohibited from using, either directly or indirectly the corporation money or warrants in his custody and keeping, for his own use and benefit, or that of any other person or persons whomsoever; and any violation of this provision shall subject him to immediate removal from office by the mayor and city council, and upon conviction thereof they are hereby authorized to declare such office vacant; and the city council shall appoint a successor for the term unexpired of the officer so removed.

1327. Treasurer's report. [Ch. 37, '90.] § 8. The treasurer shall report to the city council at such time as may be prescribed by ordinance, giving a full and detailed account of all receipts and expenditures during and since his last report, and the state of the treasury. He shall also keep a register of all warrants redeemed and paid during the year, describing such warrants, their date, amount, number, the fund from which paid, and person to whom paid, specifying also the time of payment; and all such warrants shall be examined by the finance committee of the council, at the time of making such report.

1328. Special funds. [Ch. 37, '90.] § 9. All moneys received on any special assessment shall be held by the treasurer as a special fund, to be applied to the payment of the improvement for which the assessment was made; and said money shall be used for no other purpose whatever.

ARTICLE 9. SALARIES.

1329. Salary of mayor and treasurer. [Ch. 144, '95; ch. 37, '90.] § 1. That in all cities of the first class the mayor and city treasurer shall each receive a salary of six hundred dollars per annum. The city auditor, city attorney and city assessor shall each receive a salary of one thousand dollars per annum.

1330. When paid. [Ch. 144, '95; ch. 37, '90.] § 2. The salary of each of the aforesaid officers shall be payable in equal monthly installments.

1331. City council may fix salary of aldermen. [Ch. 129, '93.] § 1. That in cities of the first class within this state, the city council may, by ordinance, fix the salary of its aldermen at not to exceed one hundred dollars per annum; provided, that an additional compensation not exceeding one hundred dollars per annum may be, by ordinance, allowed and paid to the chairman of not exceeding one standing committee.

Municipality having paid salary of *de facto* officer, is not liable for salary for same period who subsequently proves his title of the office. Fuller v. Roberts County, 68 N. W. Rep. 308.

ARTICLE 10. ASSESSMENT AND TAXATION.

1332. City assessor. [Ch. 37, '90.] § 1. The city assessor shall perform all the duties in relation to the assessing of property for the purpose of levying of all city, county and state taxes. Upon the completion of the assessment roll he shall return the same to the city auditor, who shall lay the same before the board of review or equalization at their regular meeting.

1333. General law governs — assessment rolls. [Ch. 37, '90.] § 2. The assessor shall be governed by the same laws and regulations as county and township assessors, and shall return his assessment roll on or before the second Tuesday in June of each year. Said assessment roll shall be opened to the inspection of all persons interested until the meeting of the board of review or equalization.

1334. Board of equalization. [Ch. 37, '90.] § 3. The board of equalization shall be composed of the city council and auditor, and shall meet on the third Tuesday of June in each year. The city editor shall act as clerk of said board and keep an accurate record of all changes made in the valuation and of all other proceedings. They may adjourn from day to day until their work is completed, and a majority of the whole board shall constitute a quorum to transact business. If no quorum is present the clerk may adjourn from day to day and publicly announce the time to which the meeting is adjourned.

1335. Meeting of board — duty. [Ch. 37, '90.] § 4. The board of equalization shall meet at the time fixed in this act at the usual place of meeting of the city council, and shall proceed to equalize and correct such assessment roll. They may change the valuation and assessment of any real or personal property upon the roll, by increasing or diminishing the assessed valuation thereof, as shall be reasonable and just to render taxation uniform. Provided, that the valuation of any personal property, as returned by the assessor, shall not be increased more than twenty-five per cent. without first giving the owner or his agent notice of the intention of the board to so increase it; such notice shall be by personal notice served upon the owner or agent or by leaving a copy at his place of business or last place of residence, and shall state the time when the board will be in session to act upon the matter.

ASSESSOR.

1336. Appointment by mayor — term of office. [Ch. 120, '93.] § 1. The city assessor in cities of the first and second class shall be appointed by the mayor with the approval of the city council, and shall hold his office for one year from the first day of July next following the time of election of mayor, and until his successor is appointed and qualified; provided, that the term of office of assessor first appointed under the provisions of this act shall terminate the first day of July, eighteen hundred and ninety-three.

1337. Salary. [Ch. 120, '93.] § 2. The salary of the city assessor in cities of the first class shall not exceed twelve hundred dollars per

annum; in cities of the second class the salary of the assessor shall not exceed six hundred dollars per annum.

1338. Duties. [Ch. 120, '93.] § 3. The city assessor shall perform all the duties in relation to the assessing of property for the purpose of levying all city, county, school and state taxes. Upon the completion of the assessment roll, he shall return the same to the city auditor, who shall lay the same before the board of equalization at its regular meeting. It shall be the duty of the city assessor to prepare and keep in his office for the use of himself and his successor in office, in such form as he shall determine, all such information in regard to the real and personal property within the city as shall be useful and necessary in determining the value of the same for the purposes of the assessment in order to effect as near as may be a just and uniform basis and rate of assessment and valuation. He shall render such assistance to the city engineer and the city council as they may require in the making of special assessments for municipal improvements, and perform such other duties as may be prescribed by the city council.

1339. How governed. [Ch. 120, '93.] § 4. The assessor shall be governed by the same laws and regulations as county and township assessors and shall return his assessment roll on or before the second Tuesday in June in each year. Said assessment roll shall be open to the inspection of all persons interested until the meeting of the board of equalization.

1340. Power of board. [Ch. 37, '90.] § 5. The board of equalization must place upon and add to the assessment roll any property, real or personal, subject to taxation, which has been omitted therefrom by the owner or by the assessor, and enter the same at a valuation so that it will bear an equal and just proportion of taxation. During the session of said board any person, or his attorney or agent, feeling aggrieved by anything in the assessment roll, may apply to the board for the correction of alleged errors in the listing or valuation of his property, whether real or personal, and the board may correct the same as they may deem just; or if the board have reason to believe that any person has failed to return to the assessor all personal property required by law to be returned, or if any person refuse to swear to the returns so made the board shall notify the person who has so failed to make return, or refused to swear to the return in the same manner as prescribed in section four of this article, and may examine each person on oath, in regard to such property, or if he refuse to appear they may fix such valuation at a sum which they shall deem just. Any person feeling aggrieved at any decision of the board of equalization, upon any matter that he has called upon to correct, alter, or change in reference to

the listing or valuation of his property, may appeal to the circuit court in the county where the property is situated.

1341. Assessment rolls to be delivered to county auditor. [Ch. 37, '90.] § 6. Within ten days after the completion of the equalization of the assessment as herein provided, the city auditor shall deliver the same to the county auditor of the county in which such city is situated, with the certificate that the same is correct as equalized by the board of equalization, and the same shall be accepted by the board of county commissioners of such county in lieu of all other assessment rolls for said property in said city subject to equalization.

TAX LEVY.

1341a. City council to levy tax. [Ch. 141, '95; ch. 37, '90.] § 7. The city council shall, at their first regular meeting in September, or within ten days thereafter, levy a tax for general purposes sufficient to meet the current expenses of the year, based upon estimates furnished by the city auditor, or a committee of the city council, and such levy for general expenses shall not exceed twenty (20) mills on a dollar of the assessed valuation of the property listed for taxation within the city, and in addition thereto, an addition for the interest and sinking fund, as required by this act, and such levy shall be certified forthwith to the county auditor of the county in which such city is situated, together with the amount levied by the board of education of such city, if any. This levy shall be in specific amounts of valuation. The auditor of such county shall extend the same upon the tax roll of the county with, and in the same manner as other taxes are extended, except that the said tax may be included in one amount, and the school tax in one amount for each person, lot or parcel of land.

1342. County treasurer collector of city taxes. [Ch. 37, '90.] § 8. The county treasurer of such county shall collect and enforce the collection of the city and school tax with and in the same manner as other taxes, and shall pay over to the city treasurer on the first of every month on demand, all such taxes so collected during the preceding month, retaining one per centum of such taxes, as his commission for collecting the same, (and shall forthwith notify the city auditor of the amount so paid over.) He shall take duplicate receipts for all such amounts so paid to the city treasurer, one of which shall be forthwith sent to the city auditor.

1343. Apportionment of funds according to levy. [Ch. 37, '90.] § 9. The city treasurer and auditor shall each apportion said amounts so received by the city treasurer, and credit each fund with its proportion

or share according to the levy made by the council, and the county treasurer at the time of paying over such funds shall furnish the city treasurer and auditor with a statement of the amount collected for each year separately.

ARTICLE 11. JUSTICE OF THE PEACE.

1344. Jurisdiction of police justices. [Ch. 127, '93; ch. 37, '90.]

§ 1. The police justice of the peace shall have concurrent jurisdiction with that of the city justice of the peace to hear, try and determine offenses against the ordinances of the city; and he shall have concurrent jurisdiction with other justices of the peace in the county in all other cases, civil and criminal; provided, that all fines, penalties and forfeitures for the violation of any city ordinances, when tried before the police or city justice, shall, when collected, be paid by the officer receiving the same to the city treasurer of such city.

1345. Duty of justice in case of complaint. [Ch. 37, '90.] § 2.

Whenever complaint shall be made to the police justice upon oath or affirmation of any person competent to testify against the accused, that an offense has been committed, of which the police justice has jurisdiction, such justice shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the chief of police or the sheriff or any constable of the county, or some person especially appointed by said justice for such purpose.

1346. Shall hear and determine complaint. [Ch. 37, '90.] § 3.

When any person shall be brought before the said justice upon such warrant, it shall be his duty to hear and determine the complaint alleged against the defendant.

1347. Postponement on trial. [Ch. 37, '90.] § 4.

Upon good cause such justice may postpone the trial of the case to a day certain, in which case he shall require the defendant to enter into recognizance with sufficient security, conditioned that he will appear before such justice, at the time and place appointed, and then and there answer the complaint alleged against him.

1348. May summon witnesses. [Ch. 37, '90.] § 5.

It shall be the duty of such justice to summons all persons whose testimony may be deemed material as witnesses on the trial and enforce their attendance by attachment if necessary; and when a trial shall be continued by said justice, he may verbally notify such witnesses as may be present at the continuance to attend before him, to testify in the cause set for trial; and such verbal notice shall be valid as a summons.

1349. General laws govern. [Ch. 37, '90.] § 6. All trials before the said justice for misdemeanors arising under the laws of this state shall be governed by the criminal procedure applicable to justices' courts in like cases.

1350. Judgment. [Ch. 37, '90.] § 7. In all trials for offenses under the ordinances of said city, if the defendant is found guilty, said justice shall render judgment accordingly. It shall be a part of the judgment that the defendant stand committed until such judgment be complied with; in no case to exceed one day for every one dollar and twenty-five cents fine and costs assessed against said defendant.

1351. Conservator of the peace. [Ch. 37, '90.] § 8. Said justice shall be conservator of the peace, and his court shall be open every day except Sunday to hear and determine any and all cases cognizable before him; and shall have power to bring parties forthwith before him for trial; and no act shall be performed by him on Sunday except to receive complaints, issue process, and take bail, and receive verdicts.

1352. Appeals. [Ch. 37, '90.] § 9. In all cases before the said justice, arising under the ordinances of the city, an appeal may be taken by the defendant to the county or circuit court of the county, as in other appeals from justice court, but no appeal shall be allowed unless such defendant shall (in case of fine) within ten days (in case of imprisonment) within twenty-four hours, enter into recognizance with sufficient security, to be approved by said justice, conditioned in case of fine for the payment of said fine and costs, and costs of appeal, and in case of judgment or imprisonment that he will render himself in execution thereof, if it should be determined against the appellant.

1353. Power limited. [Ch. 37, '90.] § 10. Any person convicted before the said justice of an offense under the ordinances of the city, shall be punished by fine and imprisonment, as may be regulated by ordinance, and under no circumstance shall such justice remit fines or penalties, or payment of costs or otherwise.

1354. Jurisdiction of city justices. [Ch. 127, '93; ch. 37, '90.] § 11. The city justice of the peace shall have concurrent jurisdiction with that of the police justice to hear, try and determine offenses against the ordinances of the city with the same power and authority as is now possessed by the police justice of the peace in reference thereto, and the practice, procedure, and duties of the city justice shall be the same as is now possessed by the police justice of the peace. The city justice of the peace shall also have the same jurisdiction as justices of the peace within said county in all civil and criminal cases, and within the jurisdiction hereby conferred the power of said court

as a committing magistrate and in the trial of cases, shall be the same, as now or hereafter provided by the laws of the state for justices of the peace, and the process and proceeding of said court shall be governed by the laws regulating proceedings in justices' courts, and in all cases of trial in said court an appeal may be taken to the county or circuit court for said county in the same manner and upon the same condition as provided by the laws of the state in cases of appeal from justices of the peace, and on such appeal the county and circuit court shall have the power as provided by said laws.

1355. Vacancy filled by city council. [Ch. 90, '91; ch. 37, '90.] § 12. In case of vacancy of the office of police justice by death or resignation or otherwise the city council shall fill such vacancy until the next annual election or until his successor is elected and qualified, and in case of temporary absence, interest or disability to perform his duties it shall be the duty of the city justice of the peace to act as police justice during such vacancy, absence or disability in the trial of cases cognizable before said police justice.

1356. Malicious prosecution. [Ch. 37, '90.] § 13. If upon any trial under the provisions of this act, it shall appear to the satisfaction of the police justice or city justice, or the jury, in cases arising under the laws of the state, that the prosecution was commenced without probable cause, or from malicious motives, the jury or justice trying the case shall state the name of the complaining witness in the findings, and shall impose the costs of the prosecution upon him, and judgment shall be rendered against such complaining witness that he pay such costs, and stand committed until the same are paid.

1357. General rules. [Ch. 37, '90.] § 14. The city justice of the peace shall have power to enforce due obedience to all orders, rules, judgments and decrees made by them, and they may fine or imprison for contempt offered to them while holding their court, or to process issued or orders made by them in the same manner and to the same extent as provided for justices' courts. On the trial of any cases in said courts it shall be the duty of the police or city justice to sign any bill of exceptions rendered to the court during the process of such trial; provided, that the truth of the matter be fairly stated, and thereupon exceptions shall be entered in the record of such trial and become a part thereof; and any final conviction, sentence or judgment of said court may be examined by the appellate court on writ of error, which may be allowed by said court, or the judge thereof, for sufficient cause, and proceedings may be stayed, as may be deemed reasonable and the

revising court shall in such proceedings take judicial notice of all the ordinances of said city. Cases before the police justice arising under the city ordinances shall be tried and determined by the justice without the intervention of a jury, except in cases, where, under the provisions of the ordinances of the city, imprisonment for a longer period than ten days is made a part of the penalty, or the maximum fine shall be twenty dollars or over, and the defendant shall demand a trial by jury before the commencement of such trial; and when a demand shall be so made it shall be the duty of said justice to write down the names of twelve persons, residents of the city, and having the qualifications of jurors in the circuit court, and the defendant and the attorney for the city, shall each strike off three names, or, in case the defendant shall neglect or refuse so to do, then the justice, with the attorney for the city, shall strike off the names, and the said justice shall at once issue his venire to the chief of police commanding him to summon the six persons whose names remain upon the list as jurors, and in all trials by jury in said court challenges shall be allowed in the same manner and for the same causes as in the circuit court, in cases of misdemeanor; and in case the number shall be reduced below six by such challenges, or any portion of said number shall fail to attend, then the chief of police shall summon in a sufficient number of talesmen, having the qualifications of jurors, to complete the panel, which shall in all cases consist of six jurors. If either party objects to the competency of a juror, the question thereon must be tried in a summary manner by the said justice, who may examine the juror or other witness under oath. Each and every person summoned as a juror in any case shall be entitled to a fee of fifty cents, and in case of conviction such fee shall be taxed against the defendant as a part of the costs of the case. In all cases, not herein specially provided for, the process and proceedings of said court shall be governed by the laws regulating proceedings in justices' courts in criminal cases. The police justice shall be in attendance at his office for the transaction of business at such reasonable hours as the city council may prescribe, and complaints may be made to and writs and process issued by them at all times in court or otherwise.

ARTICLE 12. CITY ENGINEER.

1358. Duties. [Ch. 37, '90.] § 1. The city engineer shall be a practical engineer and surveyor. He shall keep his office in some convenient place in such city, and the council shall by ordinance prescribe his duties, and fix his compensation for services performed for the city. All surveys, profiles, plans or estimates, made by him for the city, shall be the property of the city, and shall be carefully preserved in the office of the engineer, open to the inspection of

all persons interested; and the same, together with all books and papers appertaining to said office, shall be delivered over by the engineer, at the expiration of his term of office, to his successor or the city council.

ARTICLE 13. POLICE.

1359. Chief of police. [Ch. 37, '90.] § 1. The chief of police shall perform such duties as shall be prescribed by the city council for the preservation of the peace. All police officers, and watchmen of any city, shall possess within the city limits, the powers of constables by the laws of this state and it shall be their duty to execute and serve all warrants, process, commitments and all writs whatsoever issued by the police and city justice of the peace, for any violation of the laws of the state of South Dakota, or of the ordinances of said city, or any provisions of this act; and also all writs and process whatsoever issued by the police or city justice in civil actions; and they shall have authority to pursue and arrest any person fleeing from justice, in any part of the state, and when performing the duties aforesaid, shall be entitled to the same fees as constables, for like service; watchmen shall have the authority to arrest and detain any person guilty of any breach of the peace or any violation of the laws of the state or of the ordinances of the city, and for these purposes shall possess the powers of constables, under the laws of this state, while on duty.

1360. Warrants for arrests. [Ch. 37, '90.] § 2. All warrants issued by the police or city justice for the violation of any general law of this state, shall run to the sheriff or any constable of the county, or to the chief of police or any policeman of the city; but no chief of police or policeman where he goes outside of the city to make arrests shall receive any fees therefor unless the commissioners of the county are satisfied that a delay in obtaining the sheriff or his deputy, or constable to make the arrest might endanger an escape.

ARTICLE 14. ELECTIONS.

1361. City election. [Ch. 37, '90.] § 1. There shall be an annual election for electing officers herein provided held on the third Tuesday of April of each and every year at such place or places in each ward as the council shall designate, and the polls shall be kept open continually from nine o'clock in the forenoon until four o'clock in the afternoon and no longer, and ten days' previous notice shall be given by the council, of the time and place of holding such election, by publication in at least two of the city papers published in said city, if two shall be published therein.

1362. Election districts. [Ch. 37, '90.] § 2. Each ward shall constitute an election district; but whenever the number of legal voters in any ward shall exceed five hundred, the council may by ordinance divide such ward into two or more precincts for voting purposes, and whenever the number of legal voters in any two or more contiguous wards shall not exceed one hundred, as determined by the last annual election, the council may by ordinance consolidate such two or more wards into one precinct for voting purposes; provided, such ordinance shall be passed and take effect before time of giving notice of election, and said wards and precincts shall be and are hereby made election districts for all state and county elections.

1363. Legal voters. [Ch. 37, '90.] § 3. Every legal voter of the county in which such city is located, who shall have been a resident of the city thirty days next preceding a city election, is declared a citizen of said city and shall be entitled to vote at all city elections; provided, that the city council shall provide for the registration of all voters as required by the laws of the state, and no person shall be entitled to vote in any other place than the ward or precinct where he has resided for ten days next preceding such election.

1364. First election. [Ch. 37, '90.] § 4. At the first election under this act, there shall be elected the full number of aldermen to which the city shall be entitled. At the first meeting of the city council after such election, the aldermen elected shall be divided, by lot, into two classes, those of the first class shall continue in office for one year, and those of the second for two years, and at the first meeting of the city council in May, 1890, the aldermen elected in the cities heretofore organized under the general laws shall be divided into two classes, and hold their offices as provided in this section.

1365. General election law governs. [Ch. 37, '90.] § 5. The manner of conducting and voting at elections to be held under this act, and contesting the same, the keeping of the poll lists and canvassing the votes, shall be the same, as nearly as may be, as in the case of the election of county officers under the general laws of this state. The judges of the election shall appoint clerks when necessary to fill vacancies, and the judges and clerks shall take the same oath and have the same powers and authority as the judges and clerks of the general state elections. After the closing of the polls, the ballots shall be counted and returns made out and returned, under seal to the city auditor, within two days after the election, and thereupon the city council shall examine and canvass the same, and declare the result of the election, and cause a statement thereof to be made on its journal.

1366. Judges of election. [Ch. 37, '90.] § 6. The city council shall, at its regular meetings next preceding the annual elections, appoint three judges for each precinct, or voting place, who shall act as judges of election, for such precinct; provided, that no candidate for office at such election shall act as judge or clerk.

1367. Highest number of votes elect — tie. [Ch. 37, '90.] § 7. The person having the highest number of votes for any office shall be declared elected. In case of a tie in the election of any city officer, it shall be determined by lot, in presence of the city council, in such manner as they shall direct, which candidate or candidates shall hold office.

1368. Notice by city auditor. [Ch. 37, '90.] § 8. It shall be the duty of the city auditor, within two days after the result of the election is declared, or appointment made, to notify all persons elected, or appointed to office, of their election or appointment, and unless such persons shall qualify in ten days after such notice the office shall become vacant.

1369. Special elections. [C. 61, '97; ch. 37, '90.] § 9. If there is a failure to elect any officer herein required to be elected, or the person elected should fail to qualify, or for any other cause that may arise, the city council shall forthwith order a new election therefor, and in all cases necessary for the purpose of this act may call special elections, appoint judges therefor, canvass the returns thereof, and provide by ordinance the mode of conducting the same; and shall give notice of such special elections, in which it shall be stated the questions to be voted upon, and cause such notices to be published for the same length of time, and in the same manner as is required in the case of regular annual elections in such city; provided, that in case of a vacancy in any city office, accruing from any cause in cities of the third class, the city council may appoint any elector of said city to fill said vacancy until the next regular city election.

1370. Term of office commences. [Ch. 89, '91; ch. 37, '90.] § 10. The term of every officer elected under this act shall commence on the first Monday in May of the year for which he is elected.

1371. Neglect to qualify. [Ch. 37, '90.] § 11. Any officer moving from the city or ward for which he is elected, or any officer who shall refuse or neglect for ten days after notice of his election or appointment to enter upon the discharge of the duties of his office shall be

deemed to have vacated his office, and the city council shall proceed to fill the vacancy as herein prescribed.

ARTICLE 15. FINANCES.

1372. Fiscal year. [Ch. 37, '90.] § 1. The fiscal year of each city organized under this act shall commence on the first day of September of each year.

1373. Annual appropriation. [Ch. 37, '90.] § 2. The city council shall at their regular meeting in September of each year, or within ten days thereafter, pass an ordinance to be termed the annual appropriation bill, in which such corporate authorities may appropriate such sum or sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation; and in such ordinance shall specify the objects and purposes for which such appropriations are made, and the amount appropriated for each object or purpose. No further appropriations shall be made at any other time within such fiscal year, unless the proposition to make each appropriation has been first sanctioned by a majority of the legal voters of such city, either by a petition signed by them or at a general or special election duly called for that purpose.

1374. Limit of expenditures. [Ch. 37, '90.] § 3. Neither the city council nor any department or officer of the corporation shall add to the corporation expenditures in any one year anything over and above the amount provided for in the annual appropriation bill of that year, except as is herein otherwise especially provided; and no expenditures for any improvement to be paid for out of the general fund of the corporation shall exceed in any one year the amount provided for such improvement in the annual appropriation bill; provided, however, that nothing herein contained shall prevent the city council from ordering, by a two-thirds vote, any improvement the necessity for which is caused by any casualty or accident happening after such annual appropriation is made. The city council may order the mayor and finance committee to borrow a sufficient amount to provide for the necessary expenses to be incurred in making any improvements the necessity of which has arisen as is last above mentioned, for a space of time not exceeding the close of the next fiscal year, which sum and interest shall be added to the amount authorized to be raised in the next general tax levy, and embraced therein. Should any judgment be obtained against the corporation the mayor and finance committee, under sanction of the city council, may borrow a sufficient amount to pay the same, for a space of time not exceeding the close of the fiscal year, which sum and interest shall in like manner be added to the amount authorized to be raised in the general tax levy of the next year, and embraced therein.

1375. Appropriation made prior to expenditure. [Ch. 37, '90.] § 4. No contract shall be hereafter made by the city council, and no expense shall be incurred by any officers of the departments of the corporation, whether the objects of the expenditures shall have been ordered by the city council or not, unless an appropriation shall have been previously made concerning such expense, except as herein otherwise expressly provided.

Every valid municipal warrant should be paid in the order of its registration for payment, although the same is issued for an indebtedness of a prior year. *State ex rel. City of Huron v. Campbell*, Judge, 7 S. D. 568; 64 N. W. Rep. 1125.

Failure of city treasurer to keep a warrant book does not affect the right of a warrant holder. *Freemont v. City of Huron et al.*, 73 N. W. Rep. 260.

Presumption is in absence of evidence that fee for registration of warrant was paid. *Id.*

Holder entitled to interest after presentation. *Id.*

When money is collected to pay warrant, and holder notified, the fact that money is afterward paid out on warrants subsequently issued, will not prevent recovery thereon. *Shannon et al. v. City of Huron*, 69 N. W. Rep. 598.

Agents and officers exceeding authority do not bind municipal corporation. *Treadway v. Schnauber et al.*, 1 Dak. 227. 46 N. W. Rep. 464.

City warrants issued in payment of expenses in campaign to secure state capital is void. *Shannon v. City of Huron*, 69 N. W. Rep. 598.

Revenues of a municipality cannot be applied to payment of current expenses without regard to legal prior warrants, duly registered, which must be paid in the order of their registration. *Freeman v. City of Huron*, 73 N. W. Rep. 260.

ARTICLE 16. LOCAL IMPROVEMENTS.

1376. Power of city council. [Ch. 37, '90.] § 1. The city council shall have power to make assessments for local improvements on property joining or benefited thereby, and collect the same in the manner hereinafter provided, and to fix, determine and collect penalties for non-payment of any special assessment and taxes.

Certificates for street grade wherein mayor and council disregard law with reference to publication of resolution is void. *McLauren et al. v. City of Grand Forks*, 43 N. W. Rep. 710.

Persons petitioning for such improvements not estopped from asserting such invalidity. *Id.*

Municipal corporations seeking to charge property owners with the burden of street improvements must strictly pursue statutes with reference thereto. *Mason v. City of Sioux Falls*, 2 S. D. 641; 51 N. W. Rep. 774.

Assessments for local municipal improvements not taxable within the meaning of the statute and not repugnant to the provision "that all property subject to taxation shall be taxed in proportion to its value." *W. & St. P. R. R. Co. v. City of Watertown*, 1 S. D. 46; 44 N. W. Rep. 1072.

Land of railroad company by its charter exempt from taxation may be assessed for local municipal improvements. *Id.*

Such assessment not taxation within the meaning of the charter. *Id.*

1377. Appointment of commissioners. [Ch. 37, '90.] § 2. The council, upon ordering any improvement, to be paid for by special assessment, shall appoint three commissioners, who shall be disinterested freeholders and qualified voters of the city, to view the premises and assess the damages which may be occasioned by the taking of private prop-

erty, or any other damages arising from the making of such improvements. Such commissioners shall be notified as soon as practicable, by the city auditor, to attend at his office, at a time fixed by him, for the purpose of qualifying and entering upon his duties; and in case any such commissioners, upon being so notified, shall neglect or refuse to attend as aforesaid, he shall forfeit and pay a fine to the city, not exceeding fifty dollars, and shall be liable to be prosecuted therefor before the police justice, as in case of fines imposed for the violation of an ordinance of said city; and in case one only of said commissioners shall so neglect or refuse to attend, the two remaining commissioners shall fill the vacancy; in all other cases the vacancy shall be filled by the city council.

1378. Commissioners qualify. [Ch. 37, '90.] § 3. The commissioners shall be sworn by the city auditor to discharge their duties as commissioners in the matter with impartiality and fidelity, and to make due returns of their actions and doings to the city council.

1379. Duty of commissioners. [Ch. 37, '90.] § 4. The said commissioners shall, with all reasonable speed, with the assistance of the city engineer of such city, cause a survey and plat of the proposed improvement to be made and filed with the city auditor, exhibiting as far as practicable the land or parcel of property required to be taken, or which may be damaged thereby; and shall thereupon give notice by publication in the official newspaper of said city, for at least ten days, to the effect that such plat has been filed, and that said commissioners will meet at a place and time designated by them in such notice, and thence to proceed to view the premises and assess the damages for the property to be taken, or which may be damaged by such improvement.

1380. Powers and duties. [Ch. 37, '90.] § 5. At the time and place mentioned in said notice the said commissioners shall view the premises and may hear any evidence of proof offered by parties interested, and adjourn from day to day if necessary, for the purpose aforesaid. When this view and hearing aforesaid shall be concluded, they shall determine and assess the amount of damages to be paid to the owner or owners of each parcel of property proposed to be taken, or which may be damaged by said improvement, and in doing so shall take into consideration the value of the property proposed to be taken, with such other damage as may be incident thereto, and also the advantages that will accrue to such owner or owners, in making such improvements, and in case the making of such improvement should require the removal of any building or otherwise injure any permanent improvements, the said commissioners shall assess the damage separately from the damages of the land upon which they are erected.

1381. Damages — application for award. [Ch. 37, '90.] § 6. If the lands and buildings belong to different persons, or if the land be subject to lease, mortgage or judgment, or if there be any estate in it less than an estate in fee, the injury or damage done to such persons, or interest, respectively, may be awarded to them less the benefit resulting to them, from the improvement; provided, that such person or persons owning such interests, or their authorized agents shall make application to said commissioners, for such division of the award, prior to the filing of their report.

1382. Report of commissioners. [Ch. 37, '90.] § 7. The said commissioners having ascertained and assessed the damages aforesaid, shall make and file with the city auditor a written report to the city council of their actions in the premises, embracing a schedule or assessment of damages in each case, with a description of the land and the names of the owners, if known to them, and also a statement of the cost of the proceedings.

1383. Publication of notice. [Ch. 37, '90.] § 8. Upon such report being filed in the office of the city auditor, said city auditor shall give at least ten days' notice by publication in the official newspaper of such city, to the effect that such assessments have been returned, and that the same will be confirmed by the city council, at a meeting thereof to be named in said notice, unless objections are made in writing by persons interested in any land required to be taken. The city council, upon the day fixed for the consideration of such report, or at any subsequent meeting to which the same may stand over or be referred, shall have the power in their discretion to confirm, revise or annul the assessment, giving due consideration to any objections interposed by parties interested; if the report be not confirmed by the city council proceedings may be taken anew to assess the damages.

REASSESSMENT.

1384. Cities authorized to reassess and to relevy — amount of assessment. [Ch. 145, '95.] § 1. The city council and city officers of any city in the state of South Dakota, are hereby authorized and empowered in cases where any assessment or assessments for local improvements within such city have heretofore been set aside or declared void by reason of the want of power or authority to order said improvements or for non-compliance with the provisions of the charter of such city in ordering or letting the work, or making the contracts in relation thereto, or making the assessment therefor, or where such city or any officer whose duty it was by law to collect such assessment or assessments has

been restrained or enjoined from the collection of the same or any part thereof, or in any case where any reassessment of any special assessment heretofore made upon any lot or parcel of land shall have been set aside or in any manner rendered ineffectual, to reassess and relevy the amount of such assessment or assessments for such local improvement or improvements and to collect the same in the same manner as the taxes or assessments for local improvements are assessed and collected by law. In making such reassessment there shall be added to the amount of the assessment and included in and made a part of such reassessment, interest on said amount at the rate of seven per centum per annum from the date the assessment heretofore made by such city became due.

1385. Assessment declared valid liens. [Ch. 145, '95.] § 2. The said assessment or assessments, when the same shall have been reassessed as provided by this act, with the interest as provided in the preceding section are hereby declared to be valid liens upon the lots and parcels of land which would have been chargeable therewith, if the assessment or assessments had been levied and assessed according to and by authority of law, and the city making such reassessment is hereby authorized to collect the same in the same manner as other assessments for local improvements are collected by law; provided, that in all cases when the assessment formerly made by any such city shall have been heretofore paid upon any of the lots or parcels of land charged therewith, such payment shall constitute payment of the reassessment hereby authorized to be made.

1386. Damages paid out of general fund. [Ch. 37, '90.] § 9. The damages assessed shall be paid out of the general funds of the city, and shall be paid or tendered, or deposited and set apart in the city treasury to and for the use of the parties entitled thereto, within six months of the confirmation of such assessment and report, and in case the city council should be unable to determine to whom the damages in any particular case so awarded should be paid, or in case of disputed claims in relation thereto, the damages in such case may be deposited by the order of the city council, in the circuit court of the county, in the same manner as moneys are paid into courts, until the parties entitled thereto shall substantiate their claims thereto.

1387. Removal of buildings. [Ch. 37, '90.] § 10. Whenever in making such improvements it shall be found necessary to remove any building, or part thereof, the commissioners shall assess the damages to the owner thereof, in case the building be taken, also the damage in case the same should be removed; and the owner thereof shall elect which assessment he will take, by a written notice, to be presented to

the city council at the time of the confirmation of the assessment. And in case he or they elect to remove said building, the same shall be done within thirty days after such confirmation, and shall thereupon be entitled to the amount so awarded. When such owner shall not have elected to remove such building, or shall have neglected to remove it after having so elected, within the prescribed time, such buildings, or so much thereof as may be necessary, upon payment, or depositing the amount of the damages so awarded, in manner aforesaid, may then be taken and appropriated, sold or disposed of as the city council may direct, and the same or the proceeds thereof shall belong to the city.

1388. Appeal. [Ch. 37, '90.] § 11. Any person feeling himself aggrieved by the assessment may, by notice in writing served on the proper officers of the city, a copy thereof, with proof of service, shall be filed in the office of the clerk of the circuit court of such county within twenty days after the confirmation of said report or assessment, appeal from such assessment to the circuit court aforesaid, when such appeal shall be tried by court and jury as in ordinary cases, but no pleadings shall be required, and the party appealing shall specify in the notice of appeal the grounds of objection to such assessment, and shall not be entitled to have any other objection than those specified considered, and a transcript of such report certified by the city auditor, or the original thereof, shall be prima facie evidence of the facts therein stated, and that such assessment was just and made in conformity to law. The judgment of such court therein shall be final; such appeal shall be entered and brought on for trial, and be governed by the same rules in all other respects as appeals from justices of the peace in civil actions.

1389. Survey. [Ch. 37, '90.] § 12. Whenever any public grounds, street or alley shall be laid out, widened or enlarged, under the provisions of this act, the city council shall cause an accurate survey and profile thereof to be made, and filed in the office of the city engineer, and also filed in the office of the register of deeds of the county in which said city is situated.

1390. Vacation of public grounds. [Ch. 37, '90.] § 13. No public grounds, streets or alleys, or part thereof within the city shall be vacated or discontinued by the city council except upon a petition of the majority of the owners of the property on the line of such public grounds, streets or alleys resident within the city. Such petition shall set forth the facts and reasons for such vacation accompanied by a plat of such public grounds, streets or alleys proposed to be vacated, and shall be verified by the oath of at least two of the petitioners, and the

consent in writing of all the owners of the property adjoining the plat to be so vacated; the city council thereupon shall, if they deem it expedient that the matter should be proceeded with, order the petition to be filed with the city auditor, who shall give notice by publication in the official newspaper of the city for four weeks at least once in each week, to the effect that such petition has been filed as aforesaid, and stating in brief its object, and that said petition will be heard and considered by the council, or a committee of them, on a certain day therein specified, not less than ten days from the expiration of such publication. The city council, or such committee as may be appointed by them for the purpose, at the time and place appointed shall investigate and consider the matter, and shall hear the evidence and testimony of the parties interested. The city council thereupon after hearing the same, or upon the report of such committee favoring the granting of such petition, may, by resolution passed by a two-thirds vote of all the members, elect to declare such public grounds, streets, alleys or highways vacated; which said resolution before the same shall go into effect shall be published as in the case of ordinances, and thereupon a transcript of such resolution duly certified by the city auditor shall be filed for record and duly recorded in the office of the register of deeds of the county. Any party aggrieved thereby may, within twenty days after the publication of such resolution, appeal to the court of the county, under the same regulations as in the case of opening streets and alleys, and the judgment of the court therein shall be final.

[Ch. 122, '93.] Provided, that in any city of the first or second class, whenever any street or avenue, or any part thereof as designated upon any recorded plat of the same, shall not have been used [or] traveled as a street or avenue at any time during the period of twenty years subsequent to the recording of the plat the same may, upon application of the owner or owners of all the real property abutting upon both sides thereof, be vacated by the city council of said city. The application for such vacation shall be made upon petition of the abutting owner or owners, and shall be verified by the affidavit of said owner or owners or his or their agent or attorney. The city council shall cause notice of time and place when said petition shall be considered, to be published once in each week for four successive weeks in the official newspaper of the city, and said hearing shall not take place less than thirty days from the date of the first publication of said notice. Upon the hearing it shall be sufficient to establish that the street or part of street to be vacated has not been used, worked or traveled as such during twenty years next preceding the time of the

meeting and since the recording of the plat thereof. The resolution of vacation shall be published and recorded as hereinbefore required.

1391. Record of proceedings. [Ch. 37, '90.] § 14. It shall be the duty of the city auditor to keep in his office a record of all proceedings taken in the matter of opening, vacating, paving, or otherwise improving streets and alleys, and after the confirmation of any report mentioned herein in such matters, such auditor shall carefully record in such record all the proceedings taken in relation to the matters in said report, including all petitions, orders and appointments of commissioners, notices and proofs of publication thereof, and orders and resolutions of the council. And the said record or a certified transcript thereof, or the original papers, petitions, proofs of publication, orders or resolutions on file in his office shall be prima facie evidence of the facts therein contained in any court or place in this state.

1392. Improvements — contract let to the lowest bidder. [Ch. 37, '90.] § 15. When the city council shall deem it necessary to open, widen, extend, grade, pave, macadamize, bridge, construct a viaduct, curb, gutter, drain, lay or extend its water mains or otherwise improve any street, alley, lane, avenue, or highway, or other public grounds within the city limits, for which a special assessment is to be levied as herein provided, the city council shall by resolution declare such work or improvement necessary to be done, and such resolution shall be published for four consecutive weeks, at least once a week, in the official newspaper of the city; and if a majority of the owners of the property liable to be assessed therefor shall not within twenty days after the expiration of such publication file with the city auditor a written protest against the improvement, then the city council shall have power to cause such improvement to be made, and to contract therefor, and to levy and to collect the assessment as herein provided, and all work done under this section shall be let by contract to the lowest responsible bidder therefor.

1393. Estimation of costs. [Ch. 37, '90.] § 16. Whenever any work or improvement mentioned in the preceding section shall have been determined upon, and the contract let therefor, the city engineer shall forthwith calculate the amount to be assessed for such improvement for each lot or parcel of ground abutting or abounding upon such improvement, and in estimating the assessment he shall take the cost of such improvements fronting on the property to be assessed, and divide the same by the number of feet fronting or abutting upon the same, and the quotient shall be the sum to be assessed per front foot so abutting, and said estimate shall be filed with the city auditor, and shall be presented to the city council for their approval at the first

meeting held thereafter. And the city auditor shall cause said estimate of the city engineer, together with notice of time and place when the council will meet to approve of the same, to be published in the official newspaper of the city for at least ten days prior to the meeting of the city council to approve the same.

1394. Assessments. [Ch. 37, '90.] § 17. After said estimate provided in section sixteen shall have been so approved, the auditor shall forthwith make, or cause to be made, an assessment roll, describing the property so assessed, with the name of the owner, if known, and the amount assessed to each lot, piece or parcel of ground, as approved by the city council, and attach thereto a copy of the resolutions of the city council approving the same, and certify that the same is correct, and shall file the same with the city treasurer for collection. The city treasurer shall publish said list three successive weeks, at least once in each week, in the official newspaper of the city, together with a notice that a penalty of ten per centum will be added thereto if the same is not paid within thirty days after the date of the first publication, stating the time when such penalty shall accrue.

1395. Record of grade of the streets. [Ch. 37, '90.] § 18. The city council may by ordinance establish the grade of all streets, alleys and sidewalks in the city, as the convenience of the inhabitants may require, and a record of the same shall be kept, together with the profile thereof in the office of the city engineer; provided, that after the grade of any street has been established as provided by law, the city shall, if they change the grade, be liable to the abutting property owners for any damage they may sustain, by reason of any permanent improvements having been made in conformity to the grade as first established.

1396. Sidewalks. [Ch. 37, '90.] § 19. The council shall by ordinance prescribe the width of sidewalks, and may establish different widths in different locations, and determine the kind of material of which they shall be constructed, having regard to the business and amount of travel in the vicinity of each, and to provide by ordinance for the letting of contracts for building the same.

1397. Notice of construction of sidewalks. [Ch. 37, '90.] § 20. Whenever the city council shall deem it necessary to construct, rebuild or repair, except as hereinafter provided, any sidewalk in said city, they shall notify any and all owners and occupants of any lot or lots, or parcels of land adjoining such sidewalks, to construct, rebuild or repair the same at his or their own cost and expense, within a time designated, by publication in the official paper of the city, once in each of the two consecutive weeks a notice to said owners and occupants setting forth

what work is to be done, and the character of the same, and the time within which they are required to do the same. Such notice may be general as to the owners, but must be specific as to the description of the lots or parcels of ground in front of which such sidewalks are to be built.

1398. Further proceedings. [Ch. 37, '90.] § 21. If such work is not done and sidewalks not built, repaired or rebuilt in the manner, and within the time prescribed in said notice, the city council may order the same to be done by such persons as they may contract with, and under the direction of the city engineer, at the expense of the lots and parcels of land adjoining said sidewalks, and said expense shall be assessed upon said lots and parcels of land so chargeable by the city engineer, and returned by him to the city council, and city auditor shall cause to be published said estimate of the city engineer, together with a notice of time and place when the city council will meet to approve of the same, by one publication in the official newspaper of the city, for at least ten days prior to the meeting of the city council to approve the same, and said assessment so made and returned if approved by the city council shall be a lien upon said lots and parcels of land on and after such approval.

1399. Certified copy of the assessment. [Ch. 37, '90.] § 22. Within ten days after such assessment shall have been so approved, the city auditor shall file a certified copy of the same in the office of the city treasurer and thereupon said assessment shall be payable and due to said city, and if not paid within sixty days thereafter, shall have a penalty of ten per centum added thereto.

1400. Repairs of sidewalks. [Ch. 37, '90.] § 23. The city council may provide by ordinance for repairing sidewalks where the amount of repairs does not exceed the sum of ten dollars for fifty feet of such sidewalk, and may pay for the same out of the general fund if they shall deem it expedient.

1401. Liability of owners. [Ch. 37, '90.] § 24. Any owner of real property who shall fail to keep in repair the sidewalks in front of or along such property if he reside thereon, or if he does not reside thereon, to repair the same forthwith, when notified, shall be held liable to the city for any damage caused by such neglect.

1402. Sale of property — notice of. [Ch. 37, '90.] § 25. There shall be a sale of all real property, for all due and unpaid special assessments thereon for local improvements held on the first Monday in March and the first Monday of December of each year, and whenever any special assessment for such local improvements shall have been levied

as provided in this act, and shall have been due and unpaid for sixty days preceding the first days of February and November of each year, the city treasurer shall give notice of such sale by publication in the official newspaper of the city once in each three consecutive weeks. The first publication shall not be less than twenty-three nor more than thirty days prior to the day of such sale. Such notice shall state when and for what purpose such assessment was made, and shall contain a list of property upon which such assessment is unpaid, with the amount of such assessment including penalty and costs of advertising (which cost shall be ten cents for each tract or parcel of land) and also the day and place of sale.

1403. City treasurer conducts sales. [Ch. 37, '90.] § 26. On the day mentioned in the preceding section, and in such notice of sale, the city treasurer or his deputy shall attend at the place designated, at ten o'clock in the forenoon of said day, and offer for sale each piece or parcel of property contained in the advertised list upon which the assessment shall remain due and unpaid, and he may adjourn the sale from day to day until the property in said list is all sold, or offered for sale; provided, that such adjournment shall not extend beyond a period of three days, from the day named in the notice.

1404. Highest bidder. [Ch. 37, '90.] § 27. The person offering to pay the amount due on any piece or parcel of land or city lot, for the smallest portion of the same shall be considered the highest bidder, and when such property is unplatted, such portion shall be taken from the southeast corner thereof, in a form as nearly square as possible, and if a city lot, it shall be so many feet extending the full depth of the lots, and taken from the north or east side of such lot.

1405. Property may be resold. [Ch. 37, '90.] § 28. Should any person bidding fail to pay the amount due forthwith, then the city treasurer may again offer the same for sale at any time before the close of the sale, or he may recover the amount of such bid by a civil action brought in the name of the city, or sell the same at private sale hereinafter provided.

1406. Record of sales. [Ch. 37, '90.] § 29. The city treasurer shall keep a record of such sales in a book for that purpose, showing the description of each piece or parcel sold or offered for sale, to whom sold, date of sale, and amount sold for, if sold, and if it is not sold it shall be so stated, and the reason, and within ten days after the close of said public sale of property the city treasurer shall file in the office of the city auditor a return of said sale showing the land or lots sold, the name of the purchaser, and the sum paid by them, and also a copy of the notice of the sale, with a certificate of advertisement, verified by an

affidavit, and such certificate shall be evidence of the regularity of the proceedings.

1407. Certificate of sale. [Ch. 37, '90.] § 30. The purchaser of any lot or tract of land sold by the city treasurer for such special assessment shall be entitled to a certificate of purchase describing the lot or tract so purchased, the sum paid, and the time when the purchaser will be entitled to a deed, which certificate shall be assignable, and the assignment must be acknowledged before some officer having authority to take acknowledgments of deeds; said certificate shall be signed by the treasurer in his official capacity, and shall be presumptive evidence of the regularity of all prior proceedings, and the treasurer may demand and receive the sum of fifty cents for each certificate so issued.

1408. Private sale. [Ch. 37, '90.] § 31. After the sale shall have closed, and after the treasurer shall have made his return thereof to the city auditor, as hereinbefore provided, if any tract, parcel or lot of land remains unsold for want of bidders, the sum for which said property was offered for sale shall draw interest at the rate of twelve per centum per annum until such property is sold or redeemed, and the treasurer is authorized to sell the same at private sale to any person who will pay the amount of the assessment, penalty and costs, with interest thereon from the time when the same was offered for sale to the time of the purchase, and to deliver to such purchaser a certificate as provided in section thirty of this article, and shall make out duplicate certificates for the amount of such purchase, one of which shall be deposited with the city auditor and the other delivered to the purchaser, with additional statement inserted in said certificate that said lands or lots were offered at public sale for such assessment, but not sold for want of bidders; and he shall indorse on said certificate, "sold for special assessment at private sale."

1409. Deed of property — form of. [Ch. 37, '90.] § 32. At the expiration of two years after the date of such sale, as fixed in the notice thereof, the purchaser or assignee shall be entitled to a deed of the property so sold, which deed shall be in form substantially as follows:

Whereas, A. B. did, on the — day of —, A. D. 189—, produce to the undersigned, C. D., treasurer of the city of —, in the county of —, and state of South Dakota, a certificate of purchase in writing, bearing date of the — day of — 18—, signed by —, who at the last-mentioned date was treasurer of said city, from which it appears that — did on the — day of — 189—, purchase at public auction (or at private sale) at the office of said treasurer, in said city, the tract, parcel or lot of land lastly in this indenture described, and

which said lot was sold to —— for the sum of —— dollars, being the amount due on the following tract or lot of land, returned delinquent for non-payment of an assessment for local improvements, made on the —— day of ——, 189—, including penalty, costs and charges, to wit: (Here insert the particular lot of 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 the special assessment, penalty and costs, as above specified, and it appearing that said lands were legally liable for such assessments, and that such assessment was duly made and charged to such land on the —— day of ——, 189—, and that said lands had been legally advertised for sale for such assessments, and were sold on the —— day of ——, 189—. Now, therefore, this indenture, made the —— day of ——, 189—, between the city of ——, county, and state of South Dakota, by ——, treasurer of said city 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 and his assigns forever the lot, 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 lot, tract or parcel of land, with the appurtenances thereunto belonging, to the said party of the second part, ——, heirs and assigns, forever, in as full and ample a manner as the said treasurer of the said city is empowered by law to sell the same. In testimony whereof the said treasurer of said city of —— has hereunto set his hand and seal on the day and year aforesaid; provided, that the owner or occupant or any other person may redeem the same at any time within the two years mentioned in this section, or before the tax deed is issued therefor, by paying the amount of such land sold for with cost and interest on the same at the rate of twelve per centum per annum from the date of such sale; and provided, further, that the land or lots belonging to minors or persons under legal disability, or any interest they may have in any lands or lots sold for such taxes, may be redeemed in the same manner at any time before such minor becomes of age and during one year thereafter.

1410, Redemption of part of property. [Ch. 37, '90.] § 33. Any person claiming a portion of any piece or parcel of land or lot sold for such special assessment may redeem the same by paying the proportion

so claimed pro rata, according to the number of feet abounding or abutting on said improvement, or if his interest be undivided he shall pay the proportion that his interest bears to the whole amount, and the conveyance shall be made for the part or portion unredeemed.

1411. Deed issued by treasurer. [Ch. 37, '90.] § 34. Upon presentation and surrender of the certificate of sale after the time of redemption shall have expired, the treasurer shall issue to the owner thereof a deed in the name of the city, as provided in section thirty-two of this article, which deed shall be executed under his hand, and the execution shall be attested by the city auditor under the seal of the city, and such deed shall vest in the grantee an absolute estate in fee simple in such land, subject, however, to all the claims which the state, county or city may have thereon for taxes, and shall be presumptive evidence of the truth of the facts therein recited, and the prima facie evidence of the regularity of all the proceedings, which deed shall be acknowledged by the treasurer before some person authorized by law to take acknowledgments of deeds, and the treasurer shall make record of the date of said deed and to whom made, and shall cancel the certificate and file the same with the city auditor.

1412. Errors. [Ch. 37, '90.] § 35. Any error in describing any lot or parcel of land, or any omission of any tract so assessed, shall not invalidate the sale as to the lots or parcels of the land correctly described, but any tract or parcel so omitted or erroneously described may be advertised and sold at the next succeeding sale.

1413. Errors — no exemption. [Ch. 37, '90.] § 36. The sale of land or city lots, or any real property for special assessment, shall not be invalid on account of such real property having been listed or charged on the assessment list, or advertised in any other name than that of the rightful owner; and no real property within the limits of the city shall be exempt from special assessment for street, sidewalk or sewer purposes.

1414. Actions must commence within three years. [Ch. 37, '90.] § 37. No action shall be commenced by the former owner or owners of land or lots, or by any person claiming under him or them, to recover possession of such land, or lots, which has been sold and conveyed by deed for non-payment of any special assessment, or to avoid such deed, unless such action shall be commenced within three years after the recording of such deed; and not until the amount of special assessment, interest and penalties, costs and expenses, and all taxes or special assessments paid on such property, shall be paid or tendered by the parties commencing such action.

1415. City bonds. [Ch. 37, '90.] § 38. For the purpose of carrying into effect and economically enforcing the provisions of this article, the city council shall have power and authority to issue the bonds of the city to an amount not exceeding one-half of one per centum of the valuation of all the property in the city, as may appear in the tax list last preceding such issue, and such issue of bonds shall not be increased until the valuation shall have increased at least one hundred thousand dollars, over and above the valuation upon which the next preceding issue shall have been based.

1416. Description of bonds. [Ch. 37, '90.] § 39. Said bonds shall be issued in amounts of not less than five hundred dollars each, with interest coupons attached, as directed by the city council, and shall draw interest at the rate not exceeding seven per centum per annum, payable annually or semi-annually, as may be determined by the city council, and shall be termed and known as "internal improvement bonds," and payable, principal and interest, in either New York city or in the city issuing the same. Said bonds shall become due and payable in not to exceed twenty years from the date of issuance thereof, and shall not be sold nor negotiated at less than their face value.

1417. Special fund. [Ch. 37, '90.] § 40. The proceeds of the sale of said bonds shall be kept as a special fund, separate and apart from the other funds of the city, and used solely and exclusively for the purpose of paying for work done and materials furnished under the provisions of this article, and in no case shall a greater amount of this fund be used for such purposes than the amount of the assessment as approved by the city council, nor until such assessments have been fixed and approved, and all such assessments, penalties and interest, when collected, shall be credited to such fund, and remain a part of the same.

1418. Mayor and auditor to sign the bonds — bond record. [Ch. 37, '90.] § 41. All bonds of the city, and all contracts and conveyances, except tax deeds, shall be signed by the mayor and countersigned by the city auditor, who shall affix the seal of the city thereto, and keep an accurate record of all bonds issued, in a book to be provided for that purpose.

ARTICLE 17. GRADING STREETS.

1419. Duty of city council. [Ch. 121, '93; ch. 37, '90.] § 1. Whenever the city council of any city shall deem it necessary to grade, pave or macadamize any street, avenue or alley, and have taken all the steps prescribed in the preceding article in relation thereto, and so provided

by an ordinance passed by a two-thirds of all the aldermen elect, they may divide the amount of the special assessment therefor into installments, the first of which shall not exceed twenty per centum of the total of said assessment which shall be due and payable from and after the filing of the assessment roll with the city treasurer.

1420. Division. [Ch. 37, '90.] § 2. The remaining portion of said assessment after deducting the first installment shall be divided into four equal annual installments, and shall be paid annually thereafter, and collected in the same manner that other assessments are now collected.

1421. Rate of interest. [Ch. 37, '90.] § 3. Each of said last-named annual installments shall bear interest at the rate of not to exceed seven per centum per annum from and after the expiration of sixty days next succeeding the filing of the assessment roll by the auditor in the office of the city treasurer.

1422. Installments may be paid before maturity. [Ch. 37, '90.] § 4. Any and all installments may be paid at any time before maturity, in which case interest shall be charged only to the time of payment, and the property charged with the payment shall be discharged from the lien to the extent of such payment.

1423. Collection of special assessment. [Ch. 37, '90.] § 5. Any city desiring to make the collection of any such special assessment as aforesaid by installments, the ordinance providing for said improvement shall also state that the same shall be collected by installments and fix the amount of the first installment.

1424. Copy of assessment roll. [Ch. 37, '90.] § 6. The auditor, within ten days after the completion of the assessment roll, shall file a certified copy thereof with the city treasurer, upon which shall be designated, in appropriate columns, first, the amount of each installment, second, the total amount of the assessment, which said items shall be carried out and set opposite each tract, lot, or piece of property so assessed.

1425. Notice by city treasurer. [Ch. 37, '90.] § 7. The notice to be given by the city treasurer as now provided for in the preceding article in addition to what is there required shall contain the amount of each installment, the rate of interest deferred installments bear, the date of payment, and that the whole of said assessment, or any installment thereof, may be paid at any time at the option of the owner or owners of said lot, block, piece or tract.

(Attempted amendment, ch. 132, L. 1899.)

ARTICLE 19. PRIVATE PROPERTY TAKEN FOR PUBLIC USE.

1426. Circuit judge may order an appraisal. [Ch. 37, '90.] § 1. Whenever any city council shall deem it necessary to appropriate, or damage any private property for the purpose of establishing, opening, widening, or extending any street, highway or alley in such city, the said council shall, by resolution passed by two-thirds majority of all the members elect, declare such appropriation necessary to be made, and the circuit judge of the county, after ten days' notice to the parties interested in such property, by personal service, or by leaving a copy thereof at the dwelling house of the party, or in case of non-residence in the state, or unknown parties, by the publication as the judge may order, shall appoint three disinterested freeholders of the city as commissioners, who shall be duly sworn to perform the duties of their appointment impartially and justly and thereupon assess the damages to the parties interested in the property taken by such appropriation, and report to the city council such assessment, and if the same be confirmed by the council by a like two-thirds majority, the damages assessed shall be paid to the parties, or deposited with the city treasurer, subject to their order, and the property taken for the use of the city. If the assessment be not confirmed in whole or in part, proceedings may be taken anew to assess the damages.

Power to condemn lands for streets and alleys by a city, does not authorize the opening of a public street across the track and depot grounds of a railway company when it would materially interfere with the usual, proper and necessary public use of the same by the company. *Winona & St. P. Ry. Co. v. City of Watertown*, 4 S. D. 323; 56 N. W. Rep. 1077.

Acceptance of proposition of lot owner of change of street across such property and making of change is a dedication of such ground occupied by street as changed. *Sweatman v. City of Deadwood*, 69 N. W. Rep. 582.

1427. Review. [Ch. 37, '90.] § 2. Any party whose property is thus appropriated may obtain a review of said report in the circuit court by filing a certified copy thereof, with written exceptions thereto, in the office of the clerk of said court, within thirty days after the confirmation of the same, or may obtain a trial by jury in said court on the question of damages by filing such certified copy of said report, with a notice of appeal, in said clerk's office within the same time. In either case a certified copy of the decision of the circuit court may be transmitted to and filed with the city clerk. The power of the circuit court on any such review or appeal shall be the same as provided by the laws of the state in railroad condemnation cases; provided, that no review or appeal shall delay or obstruct the appropriation of the property or the improvements sought to be made, if the city shall first deposit with the clerk of the circuit court the amount of money assessed as damages by the commissioners.

SEWERAGES.

1428. Districts and plans. [Ch. 128, '99; ch. 150, '93.] § 1. Any city shall have full power to construct systems of sewerage in such manner and under such regulations as the city council shall deem expedient, but shall not enter upon such construction until such city shall have been divided into sewerage districts, nor until a plan shall have been adopted therefor. Provided, that when, in the opinion of the city council, as expressed by resolution thereof, it is inexpedient to divide said city into sewerage districts such divisions shall not be necessary, in which case said city may proceed to construct a system or systems of sewerage in accordance with article 20 of chapter 37 of the laws of 1890. And provided further, that it shall not be necessary before any part of the same is constructed that the plan shall be determined upon in all its details, but it shall be settled so far as relates to that portion upon which the construction is commenced. And: Provided, further, that no measure shall be taken for the construction of such system of sewerage except upon the affirmative vote of at least two-thirds of all the aldermen elect.

1429. Diagrams. [Ch. 150, '93.] § 2. The city council shall cause diagrams of the plans of the sewerage for each district to be prepared showing the lots and parcels of land, the main sewers, minor sewers, man-holes, catch-basins, and all other matters pertaining to the system.

1430. Notice of hearing. [Ch. 150, '93.] § 3. On the completion of such diagram, notice shall be given in the official newspaper of the city, substantially in the following form: Notice is hereby given that a plan for sewerage for the district bounded as follows.....
 has been prepared and is now open for inspection at the office of the city auditor. All persons owning or interested in any real estate in such district are entitled to examine the same at any time within ten days after the first publication of this notice, and file objections to said plans. On the day of18.., the city council will be in session at the council chamber to consider objections that may have been filed, and all persons desiring to be heard before the city council can then be heard.

Dated, Mayor.
 Countersigned,, City Auditor.

The day for the hearing specified shall be within ten days after the last publication of said notice; said notice shall be published at least once each week for two successive weeks.

1431. Adoption of plans. [Ch. 150, '93.] § 4. On the day specified for said hearing, the city council shall take up and consider all objections to the plans as proposed. When the city council shall have concluded said hearing they may approve the plan as proposed, or change it in such manner as they may think proper, and approve as changed

or modified by them, or may reject the plan and direct a new plan to be prepared, in which case the same proceedings shall be had as before; provided, that, if the city council shall have directed the preparation of plans for sewerage before the passage of this act, and plans shall have been prepared in accordance with such direction, the like proceedings may be had for the adoption of the same with the same force and effect as if the same had been prepared after this act shall have taken effect.

1432. Diagram filed. [Ch. 150, '93.] § 5. When the plan for any sewer district is finally determined, a complete diagram of the same shall be prepared and filed in the office of the city auditor.

1433. Resolution to construct. [Ch. 150, '93.] § 6. Whenever any city which shall have adopted plans for sewerage, as herein provided, shall deem it necessary to construct any sewer or sewers, the city council shall, by resolution, declare the necessity therefor, and shall state the location and designate all terminal points thereof, or the district, if all sewers in the plan of the same are to be constructed at one time, and notice for ten days of the passage of such resolution shall be given by publication once in each week, for two successive weeks, in the official newspaper of the city; such notice shall state the time and place, when and where the property owners along the line of said proposed sewer or sewers can make objections to the construction thereof. From the time of the adoption of such resolution, the city council shall have jurisdiction to make the improvements therein specified, and assess the cost thereof upon the property benefited thereby, as hereinafter provided.

1434. Contract. [Ch. 150, '93:] § 7. All sewers constructed under the provisions of this act shall be let by contract to the lowest responsible and satisfactory bidder. The city council shall advertise for and receive bids to do the work so ordered, having first procured to be carefully prepared and placed on file in the office of the city engineer for the examination and guidance of bidders, plans and specifications describing the work to be done, and the kinds and qualities of material to be used; provided, however, that the city council shall have the right to reject any and all bids, and readvertise for proposals, if none of the bidders are satisfactory, or if they believe any agreement has been entered into between the bidders to prevent competition; and, provided further, that no contract shall be binding until the form thereof shall have been approved by the city attorney, and the same shall have been signed by the mayor and countersigned by the city auditor.

1435. Payment in assessment certificates. [Ch. 150, '93.] § 8. The contract may, at the option of the city, require the contractor to

receive as payment for so much of the work as shall be assessed against the lots benefited, interest-bearing certificates of assessment against such lots respectively, and the residue of such contract, if any, shall be paid out of the proceeds of a special sewerage tax to be levied upon real estate within the sewerage district by the city council as hereinafter provided.

1436. Assessment subdistricts. [Ch. 150, '93.] § 9. For the purpose of making and equalizing the special assessment for sewerage, the city council shall by ordinance subdivide any sewerage district in which it is proposed to construct under one contract a system of sewers, into assessment subdistricts and define the boundaries of each. Said subdistricts shall be formed by including in each those lots, parts of lots and parcels of land, upon which the city council shall determine and find that the benefits of such sewerage are uniform and equal; provided, that it shall not be necessary to make the divisions specified in this section, if the city council shall determine that the benefits of sewerage will be uniform and equal throughout the entire sewerage district.

1437. Sewers previously constructed, how assessed. [Ch. 150, '93.] § 10. If, by or under the direction of the city, there has been before or after the passage of this act, and before any contract therefor as herein provided, constructed any sewer or part of sewer system of sewerage, in any district or part of a district within said city, in conformity with the plans of such sewerage as already adopted or hereafter adopted, then the cost of the same, estimated upon the basis of the contract price for constructing sewers similar to those already constructed, and which has not already been assessed upon private property, may be included in said assessment, and the lots and parts of lots and parcels of land benefited thereby may be assessed for the same, in the same manner and with like force and effect, as though said sewer or parts of sewers or system of sewerage or part of system of sewerage had been constructed under a contract for the same as herein provided.

1438. Estimate for assessment. [Ch. 150, '93.] § 11. Whenever any contract for construction of any sewer or system of sewerage under the provisions of this act shall have been entered into, the city engineer, city attorney and city editor, as assessors, shall forthwith proceed to make an estimate for a special assessment therefor upon the several lots, parts of lots, parcels of land benefited thereby and report to the city council the following facts touching said improvement:

1. The total cost of said sewer or sewers calculated upon the contract price.
2. The total length of the sewer or sewers covered by the contract.

3. The total number of feet frontage of property abutting upon the street or streets in which said sewer or sewers are contracted or to be constructed.

4. The full description, together with the owner's name, of each lot, part of lot and parcel of land, and the number of feet of frontage of the same, after deductions made, bordering upon the street or streets in which such sewer or sewers are to be constructed.

5. The amount to be assessed upon each lot, part of lot and parcel of land so situated for the construction of such sewer or sewers.

6. The cost of such system of sewerage for any sewerage district shall be apportioned among the several assessment subdistricts as established by the city council, and the assessment upon each lot, part of lot and parcel of land in each of the several assessment subdistricts, shall be at a uniform rate per front foot. The cost of any sewer or sewers being for less than an entire sewerage district under one contract, shall be apportioned among the lots benefited thereby at a uniform rate per front foot without regard to the lines of assessment subdistricts provided for in this act. The total benefits of a sewer or system of sewers constructed under the provisions of this act, shall be deemed to be the contract cost of the same.

1439. Approval of estimate. [Ch. 150, '93.] § 12. Upon the filing of the report provided for in the last preceding section, the city council shall give twenty days' notice by publication in the official newspaper of the city, once in each week for three successive weeks, the first publication to be not less than twenty days before the meeting next herein mentioned, of the filing of such report, and the time and place, when and where a hearing can be had before a committee to be appointed to consider such report; and such committee shall make a report to the city council of such city, recommending the adoption or alteration of such report. Any person feeling aggrieved by the report of the assessors, shall have the right to appear before such committee and the city council of such city, and make objections thereto, and shall be accorded a hearing thereon. The city council may alter, modify or amend said estimate; provided, that the estimate for an assessment upon any lot, part of lot or parcel of land shall not be increased or diminished by the city council, unless they shall first determine that the estimate upon all the lots, parts of lots and parcels of land within the assessment subdistrict embracing such lot, part of lot or parcel of land shall be increased or diminished; and, provided further, that the whole amount of the estimate under consideration shall not be increased or diminished by the city council, but all changes made by them in said estimate, shall be for the purpose of equalizing said estimate as between the several assessment subdistricts embraced therein.

1440. Assessment. [Ch. 150, '93.] § 13. When the said estimate shall have been fully equalized by the city council, it shall be adopted and approved by resolution by a majority vote of the aldermen elect. The city auditor and city attorney shall thereupon prepare an assessment roll based upon said equalized estimate, in the form of an ordinance, and the city council of such city shall, by ordinance, assess against the several lots and parcels of land, the several amounts which shall be assessed for and on account of such improvement, which said amounts shall bear interest at the rate of six per centum per annum from the time of the finding of the completion of said improvement by the city council as mentioned in section eighteen of this act.

1441. Payment by installment. [Ch. 150, '93.] § 14. Should any one of such assessments exceed the sum of fifty dollars, the owner of the lot or parcel of land against which said assessment is made, may, if he within thirty days after the making of such assessment, and the taking effect of said ordinance, shall promise and agree, in writing, to be filed with the city auditor of such city, in consideration of the right to pay his or their assessment, or respective assessments, in installments, that he or they will not make any objections to illegality or irregularity as to their respective assessments, and will pay the same with interest thereon at the rate of not exceeding six per centum per annum, as shall by ordinance or resolution of the city council of such city be prescribed and required, he or they shall have the benefit of paying said assessments in ten annual installments, as herein provided.

1442. Payment without installments. [Ch. 150, '93.] § 15. The owner of any lot or parcel of land, who has been assessed more than the sum of fifty dollars thereon for the cost of such improvement, who will not promise and agree in writing, as provided in the preceding section, and all owners of lots or parcels of land whereon assessments of less than fifty dollars have been made against any one lot or parcel, shall be required to pay his or their assessment in full when made, and the same may be collected according to the provisions of this act, or the contractor or his assigns may foreclose such assessment as a mortgage is foreclosed in any court of competent jurisdiction, and shall recover in addition to the amount of such assessment, with interest, all costs and a reasonable attorney's fee.

1443. Payment, how applied. [Ch. 150, '93.] § 16. Whenever any payment shall be made upon any of such assessments, it shall be the duty of the county treasurer, contractor or owner of the assessments, certificates or installments of assessments, as herein provided, receiving such payment to enter upon the proper record the receipt of such money, and such receipt shall be a discharge of the lien of such assess-

ment to the extent of such payment, and upon the payment of assessment certificates, as issued under this act, they shall be surrendered to and canceled by the city treasurer.

1444. Lien of — limitations. [Ch. 150, '93.] § 17. All special assessments levied upon real estate in any such city, under the provisions of this act, are hereby made a perpetual lien thereupon from the date on which the same were levied against all persons or bodies corporate, except the United States and this state. Any persons or bodies corporate purchasing any real estate for any assessment levied by the authorities of any city under the provisions of this act, shall, after the lapse of three years from the time of recording the treasurer's deed therefor, acquire and have a complete title thereto, and thereafter all persons shall be barred from commencing or sustaining any action in any court of this state to recover possession of the same.

1445. Acceptance of work. [Ch. 150, '93.] § 18. When all the work embraced in any contract for sewerage shall have been fully completed according to the plans and specifications, the city engineer shall certify the facts in relation thereto to the city council; upon the filing of such certificate, notice shall be given to the property owners interested in said improvement, and upon whose land assessment therefor has been made of the filing of said certificate, and of the time and place, when and where the city council will meet to hear objections to the acceptance of the same; said notice shall be published at least once in each week for two successive weeks in the official newspaper of the city, and said meeting shall be held not less than ten days after the first publication of said notice. Upon the hearing any and all objections to the work done under said contract, relating to materials, construction or compliance with the plans and specifications for the same, made in writing by any property owner interested therein and verified by his affidavit, substantially in the form for the affidavit of verification of a pleading in a civil action, shall be heard by the city council; provided, that, if the city council shall make any order as hereinafter provided for the completion of the work, having reference to the correction of any defects therein, founded upon such written objection, and it shall be found upon investigation that the said objections were not in fact well founded, and no substantial defect shall be found to exist, then the person making such objections shall be liable to the city and to the contractor for all damages occasioned by such order of the city council so made, which may be recovered in civil action. If, after said hearing, the city council shall be satisfied that said work has been completed in accordance with the plans and specifications, as certified by the city engineer, they shall accept the same

and make final payment therefor as required by the contract. If, after said hearing, the city council shall be satisfied that said work has not been fully completed according to the plans and specifications, they shall make such order as they may deem proper, requiring the contractor to complete the same within a time to be limited by such order. If the contractor shall fail or refuse to comply with such order, the city council may cause such work as is necessary to complete the same, to be done by contract or by or under the direction of such officers or department of the city as it shall direct. When the work is so completed to the satisfaction of the city council, it shall then accept the work, and deduct from the original contract price the cost of all work not done by the original contractor in the completion of the same, and may order the same to be paid with certificates of assessment as herein provided, or out of any moneys deposited by the original contractor in the city treasury as hereinafter provided, or both as it shall deem proper. The acts of the city council done in pursuance of the provisions of this section shall be conclusive and binding upon the contractor, and all property owners interested in said assessment, except in case of fraud. And the acceptance of the work and issuance of the certificates of assessment to the contractor shall, after the period of six months from the date of such acceptance, be conclusive evidence of the regularity of all the proceedings in letting the contract, acceptance of work, and making the special assessment as herein provided.

1446. Collection of installments. [Ch. 150, '93.] § 19. The city auditor shall annually, on or before the first day of October in each year, make out and certify to the county auditor of the county in which said city is situated, a list of all lots, parts of lots and parcels of land, together with the name of the owner to whom they are assessed for sewerage purposes under the provisions of this act, and the amount of the annual installments of the special assessment for sewerage next coming due, the total amount remaining unpaid, and the date from which interest thereon at six per centum per annum is to be calculated, and the same shall be placed by the county auditor upon the tax roll and duplicate, and the installments and interest upon the total amount then unpaid shall be collected in the same manner as other taxes are collectible, and the law governing the collection of taxes, so far as the same is applicable, shall regulate and govern the collection of such assessments, and the proceeds therefrom shall constitute a special fund for the payment of the cost of said sewerage and the assessment certificates issued therefor and for no other purpose. The amount of each installment shall be ten per centum of the assessment against any lot or parcel of land, due and payable as follows: Ten per centum for each successive year for ten years, and the interest at the rate of

six per centum thereon, payable annually, which shall be calculated from the time of the final acceptance of the work by the city council.

1447. Collection of assessments not paid by installments. [Ch. 150, '93.] § 20. The city auditor shall forthwith, upon the final completion and acceptance of the work for which the assessment herein provided shall have been levied, certify to the county auditor of the county in which such city is situated, a list of all lots, parts of lots and parcels of land, together with the name of the owner to whom they are assessed for sewerage purposes under the provisions of this act, the assessment for which shall not be payable in installments as provided in this act, and the amount of such special assessment for sewerage together with the date from which interest thereon at the rate of six per centum per annum is to be calculated, and the same, if received by said county auditor prior to the completion of the annual tax roll and duplicate, shall be placed upon said tax roll and collected in the same manner as other taxes are collectible. If the same be not received by the county auditor before the completion of the annual tax roll and duplicate, the county auditor shall certify and file the same with the county treasurer for collection in the same manner and with like force and effect as though the same had been placed upon the tax roll and duplicate.

1448. Contractor entitled to compensation, when. [Ch. 150, '93.] § 21. In all cases the work done under the provisions of this act shall be subject to the superintendence and direction of the city council, or such committee thereof, or officers of the city as the city council shall determine, and no contractor shall be entitled to recover compensation for any work executed by him in any form of action, unless such work shall have been approved by the city council as herein provided, except as provided in the next section for partial payments.

1449. Estimates — partial payments. [Ch. 150, '93.] § 22. Whenever a system or part of a system of sewerage, requiring the construction of sewers in more than one street or alley, shall be let under one contract, the contract may provide that whenever a part of the work constituting not less than one block has been completed according to the plans and specifications, that the city engineer may, upon the demand of the contractor, certify the facts to the city council. If the city council shall accept the portion of the work so certified, they may order to be delivered to the contractor, or his assigns, all the certificates of special assessment upon the property abutting upon the work so completed and accepted: provided, the city council shall require the contractor to deposit with the city treasurer an amount equal to the difference between the face value of such certificates and seventy-five per centum of the contract price of the work so estimated, to be held by

the said city treasurer until the final completion and acceptance of all the work done under the same contract.

1450. Assessment upon corner lots. [Ch. 150, '93.] § 23. Corner lots not subdivided in ownership, and subdivisions of corner lots constituting the actual corner lots subdivided in ownership, shall be entitled to a deduction in making assessments for sewerage purposes of two-thirds from the longest street line of such corner lots or corner subdivisions thereof, or, in case of equal street lines thereof, in the assessment of that line constituting a portion of the longest street line of the original lot.

1451. Lots and parcels — owners. [Ch. 150, '93.] § 24. The term "lot" as used in this act shall be deemed to be any tract of land described as a lot in the recorded plat of the city or any addition or subdivision thereof. Any block of land not subdivided into lots or in ownership shall be assessed for sewerage purposes to the center line thereof from the front upon which the assessment is calculated. Unplatted lands shall be assessed to a depth of one hundred and fifty feet from the street line upon which the assessment is calculated; provided, that if the owner of the frontage own less than one hundred and fifty feet in depth the assessment shall cover no more than the land belonging to the owner of such frontage. The word "owner," as used in this act, shall be construed to mean the person or corporation named as grantee in the latest deed of conveyance recorded in the office of the register of deeds of the county in which such city is located, or his or their heirs or assigns.

1452. Actions and remedies. [Ch. 150, '93.] § 25. No injunction to restrain proceedings, under the provisions of this act, shall be maintained unless the same shall be issued prior to making the contract herein provided for. In any action to resist the payment of any assessment or any part thereof, made under the provisions of this act, the court shall disregard any and all irregularities or defects, whether in the proceedings of the city council or any officer of the corporation, or any plans or estimates, and the acceptance of the work by the city council upon the certificate of the city engineer shall be prima facie evidence that the contract has been complied with and the assessment exists; but, if it be shown that there is any substantial defect in the improvement, or any fraud in the contract price of the work or materials, the court may order such deduction therefor from the cost of said improvements as shall be just, and such deduction shall be ratably from the assessments on all the property abutting upon said improvement, and the court may make such order in regard to the costs, where such substantial defect or fraud is found, as to the court shall seem proper.

1453. Special sewerage tax. [Ch. 150, '93.] § 26. For the purpose of defraying the expense of engineering and superintendence in the construction of any sewer or sewers under the provisions of this act, and the expense of making the special assessment therefor, including the cost of abstracts of title and publication of notices and ordinances, and the expense of maintaining, repairing and cleaning of sewers constructed under the provisions of this act, the city council shall have the power at the time of making the annual levy of taxes for the ensuing year to levy upon the lots, parts of lots and parcels of land upon which a special assessment for sewerage under the provisions of this act has been made, a special sewerage tax of not exceeding five mills on the dollar of the valuation thereof for the then current year, which shall be collected in the same manner as general city taxes are collected.

1454. Sewer connections. [Ch. 150, '93.] § 27. The city council shall by ordinance prescribe the regulations under which sewers and drains from private property may be connected with the sewers constructed under this act. Whenever the city shall order the paving or macadamizing of any street in which any sewers shall have been previously laid or constructed, they may also order the property owners along the line of said street to lay house drains from the main sewer in such street to the curb line on either side of the street at intervals not less than twenty feet along the whole length of such paved street, except at the street and alley crossings. Notice of such order shall be given to the owners or occupants of the property adjoining such paved street, by publication thereof for six days in the official newspaper of the city, requiring them to do such work opposite their respective lots or parcels of land according to plans and specifications to be prepared and placed on file in the office of the city engineer, showing location, size and the kind and quality of the material of such lateral sewers or drains; and if such owner or occupants shall refuse or neglect to do the same before the paving or repairing of said street so ordered, and within ten days after the publication of such notice the city council may procure the same to be done, by contract or otherwise, and charge and assess the expense thereof to the lots, or parts of lots and parcels of land fronting upon such work, in the manner provided in and by the provisions of this act; and the same shall be levied and collected in the manner provided in this act; provided, that no street shall be paved or repaved by order of the city council, unless the necessary sewers and their connections shall, as required by the city council, be first laid and constructed in that portion of such street so to be paved or repaved: provided, that if such city shall have heretofore constructed any sewer as provided in section ten of this act, in any street or streets of such

city which have been ordered to be paved, and shall also have constructed and connected therewith drains and sewer pipes from the main sewer to the curb lines, as provided in this section, then the cost of such sewer connections may be included in and made a part of the assessment of the abutting property as provided in section ten.

CITIES OF FIRST CLASS.

1455. Districts and plans. [Ch. 168, '95.] § 1. Any city of the first class shall have full power to construct systems of sewerage in such manner and under such regulations as the city council shall deem expedient, but shall not enter upon such construction until such city shall have been divided into sewerage districts, nor until a plan shall have been adopted therefor; provided, that it shall not be necessary before any part of the system is constructed, that the plan shall be determined upon in all its details, but it shall be settled so far as relates to that portion of the system upon which the construction is to be commenced.

1456. Diagrams. [Ch. 168, '95.] § 2. The city council shall cause diagrams of the plans of the sewerage for each district to be prepared, showing the lots and parcels of land, the main sewers, minor sewers, man-holes, catch-basins and all other matters pertaining to the system.

1457. Notice of hearing. [Ch. 168, '95.] § 3. On the completion of such diagram, notice shall be given in the official newspaper of the city, substantially in the following form: "Notice is hereby given that a plan of sewerage for the district bounded as follows: has been prepared and is now open for inspection at the office of the city auditor. All persons owning or interested in any real estate in such district are entitled to examine the same at any time after the first publication of this notice, and to file objections to said plan. On the day of, 18., the city council will be in session at the council chamber to consider objections that may have been filed, and all persons desiring to be heard before the city council can then be heard.

Dated

., Mayor.

Countersigned,

., City Auditor."

The last day for the hearing specified shall be within ten days after the last publication of said notice; said notice shall be published at least once a week for two consecutive weeks.

1458. Adoption of plans. [Ch. 168, '95.] § 4. On the day specified for said hearing, the city council shall take up and consider all objections to the plan as proposed. When the city council shall have concluded said hearing they may approve the plan as proposed, or change it in such manner as they may think proper, and approve as changed or modified by them, or may reject the plan and direct a new plan to be prepared, in which case the same proceedings shall be had as before; provided, that if the city council shall have directed the preparation of plans for sewerage before the passage of this act, and plans shall have been prepared in accordance with such direction, the like proceedings may be had for the adoption of the same with the same force and effect as if the same has [had] been prepared after this act shall have taken effect.

1459. Diagram filed — connections. [Ch. 168, '95.] § 5. When the plan for any sewer district is finally determined, a complete diagram of the same shall be prepared and filed in the office of the city auditor. The city council, before ordering the construction of any sewer shown in such diagram, shall, by ordinance, designate the lots and parcels of land to be connected with all such sewers.

1460. Resolution to construct. [Ch. 168, '95.] § 6. Whenever the city council of any city which shall have adopted plans for sewerage as herein provided, shall deem it necessary to construct any sewer or sewers, the city council shall by resolution declare the necessity therefor, which resolution shall state the location of such sewer or sewers and designate all terminal points thereof. The city council shall cause such resolution, together with a notice stating the time and place when and where the city council will meet to consider any objections that may be made to the construction of such sewer or sewers, to be published two successive weeks, once in each week, in the official newspaper of such city, the last publication to be at least ten days prior to the date fixed for such meeting. If the owners of real estate along the line of such sewer or sewers liable for more than one-half of the assessment therefor shall not, prior to the date fixed for such meeting, file with the city auditor written objections to the construction of such sewer or sewers, signed by them, the city council shall have the right to construct the sewer or sewers specified in such resolution, and levy a special assessment therefor as hereinafter provided. If such written objections signed by such property owners shall be filed with the city auditor within the time aforesaid, the city council shall not have power to construct such sewer or sewers or levy a special assessment therefor under the provisions of this act.

1461. Construction — contract. [Ch. 168, '95.] § 7. All sewers constructed under the provisions of this act shall be let by contract to

the lowest responsible and satisfactory bidder, or the same may be constructed by the city as hereinafter provided. The city council shall advertise for and receive bids for the construction of the same, having first procured, to be carefully prepared by the city engineer and placed on file in his office for the examination and guidance of bidders and other parties interested, plans and specifications particularly describing the work to be done, the kinds and qualities of material to be used, and a detailed estimate of the probable cost of the same. The city council shall have the right to reject and all bids, if none of the bidders are satisfactory, or if they believe any agreement has been entered into between the bidders to prevent competition, or if the amount of any bid otherwise satisfactory shall be deemed by the city council to be excessive, and the city council may then either readvertise for bids, or in case the cost of the work, as estimated by the city engineer, shall not exceed the sum of two hundred and fifty dollars, may order that such sewer or sewers be constructed by the city officer having charge of work upon the streets and alleys of the city, or some person employed by the city for that purpose. No contract for the construction of any sewer or sewers shall be binding until the form of such contract shall have been approved by the city attorney, and the same shall have been signed by the mayor and countersigned by the city auditor. The city council shall require all persons entering into a contract with the city for the construction of any sewer or sewers to give bonds with sufficient sureties, for the faithful performance of such contract.

1462. Payment in assessment certificates. [Ch. 168, '95.] § 8. The contract for the construction of any sewer or sewers may, at the option of the city, require the contractor to receive as payment either for the whole or any specified proportion of the work to be done under such contract, interest-bearing certificates of any special assessments made upon any lots, parts of lots or parcels of land in such city for sewerage purposes under the provisions of this act, and the residue of such contract, if any, shall be paid out of the sewerage fund.

1463. Assessment districts [Ch. 168, '95.] § 9. If in any sewerage district in which it is proposed to construct any sewer or sewers, there shall be real estate occupied or which may be suitable for business purposes, having an assessment frontage of one thousand lineal feet or more, the city council, before ordering the construction of such sewer, or sewers, shall by ordinance subdivide such sewerage districts into two assessment districts, and define the boundaries of each, which district shall be designated as business and residence districts respectively. The business district shall be formed by including therein all lots, parts

of lots and parcels of land occupied or which may be suitable for business purposes. All other real estate in such sewerage district shall be included in and constitute the residence district. The city council shall not have power to repeal such ordinance or change the boundaries of such assessment districts after any special assessment shall have been levied for any sewer within such sewerage district.

1464. Special assessment. [Ch. 168, '95.] § 10. Whenever the construction of any sewer or sewers shall have been ordered by the city council under the provisions of this act, the city engineer and city assessor shall forthwith make a special assessment upon all lots, parts of lots and parcels of land along the line of such proposed sewer or sewers and to be connected therewith, as provided by ordinance. Which assessment upon each lot, part of lot or parcel of land situated in a business district shall be at the rate of two dollars and thirty cents per lineal foot for the whole frontage thereof upon the street upon which such sewer shall have been ordered. The assessment upon each lot, part of lot or parcel of land situated in a residence district or in any sewerage district not subdivided into business and residence districts shall be at the rate of one dollar and fifteen cents per lineal foot for the whole frontage thereof, upon the street in which such sewer shall have been ordered. Each corner lot not subdivided in ownership and the subdivision of each corner lot constituting the actual corner of such corner lot, subdivided in ownership, shall be entitled to a deduction in making such assessment of one-third from the aggregate of the frontage of such corner lot or corner subdivision thereof, upon all streets in which sewers are shown upon the diagram of the plan of sewerage with which such corner lot or corner subdivision thereof is to be connected as provided by ordinance. Such deduction shall be made from the longer frontage of such corner lot or corner subdivision thereof, or in case of equal frontage of such corner lot or corner subdivision thereof, in the assessment for the second sewer to which it shall be liable. The special assessment shall contain a full description of each lot, part of lot or parcel of land assessed, together with the name of the owner and the amount assessed upon each lot, part of lot or parcel of land. When completed such special assessment shall be filed in the office of the city auditor.

1465. Approval and levy of assessment. [Ch. 168, '95.] § 11. Upon the filing of such special assessment, the city auditor shall cause the same, together with a notice of the time and place when and where the city council will meet for the purpose of correcting, approving and levying such assessment, to be published once in each week for three successive weeks, in the official newspaper of the city, the first pub-

lication to be not less than twenty days before the date fixed for such meeting. Any person feeling aggrieved by such assessment shall have the right to appear before the city council at such meeting, and make objections thereto, and shall be accorded a hearing thereon. It shall be the duty of the city council to correct all errors and mistakes in such assessment, if any, and then by resolution to approve and levy such assessment as corrected.

1466. Assessment roll. [Ch. 168, '95.] § 12. When such assessment shall have been approved and levied by a majority vote of all the aldermen elect, it shall be the duty of the city auditor forthwith to prepare an assessment roll of such special assessment, as approved and levied by the city council, and the amounts so assessed upon each lot, part of lot and parcel of land shall bear interest at the rate of seven per centum per annum, from the time of the completion of the sewer or sewers for which such assessment shall be levied and the acceptance of the same by the city council as hereinafter provided. Such assessment roll, when completed, shall be filed in the office of the city auditor.

1467. Sewers previously constructed, how assessed. [Ch. 168, '95.] § 13. If by or under the direction of any city of the first class, there shall have been constructed before this act shall take effect, any sewer within such city in conformity with the plans of such sewerage as already adopted or which may hereafter be adopted, it shall be the duty of the proper officers of such city, to make and levy a special assessment therefor upon all lots, parts of lots and parcels of land along the line of such sewer, and to be connected therewith as provided by ordinance at the same rate and in the same manner hereinbefore provided, and such city may complete any sewer under process of construction at the time when this act shall take effect, in conformity with such plans, and levy a special assessment therefor as provided in this section. Any special assessment which shall be levied under the provisions of this section, shall be of the same validity and have the same force and effect as though the sewer or sewers for which the same shall be levied, had been constructed under the provisions of this act.

1468. Payment by installments. [Ch. 168, '95.] § 14. The owner of any lot, part of lot or parcel of land upon which any special assessment, for sewerage purposes, shall have been levied under the provisions of this act, shall have the benefit of paying such assessment, in five biennial installments as hereinafter provided, if such owner shall, within thirty days after the levying of such assessment, by an agreement in writing, signed and acknowledged by him and filed with the city auditor, in consideration of the right to pay such assessment in installments, waive any and all objections to the regularity, legality or

validity of such assessment and promise and agree to pay the same with interest thereon at the rate of seven per centum per annum.

1469. Lien of assessments. [Ch. 168, '95.] § 15. All special assessments levied upon real estate in any such city under the provisions of this act, are hereby made a perpetual lien thereupon from the date on which the same shall be levied, against all persons or bodies corporate, except the United States and the state of South Dakota. Any persons or bodies corporate purchasing any real estate for any assessment levied by the authorities of any such city under the provisions of this act, shall after the lapse of three years from the time of recording the treasurer's deed therefor, acquire and have complete title thereto, and thereafter all persons shall be barred from commencing or sustaining any action in any court of this state, to recover possession of such real estate or to avoid such debt.

1470. Acceptance of work. [Ch. 168, '95.] § 16. When all the work embraced in any contract for the construction of any sewer, shall have been fully completed according to the plans and specifications, the city engineer shall certify the facts in relation thereto to the city council. If the city council shall be satisfied that said work has been completed in accordance with the plans and specifications as certified by the city engineer, they shall accept the same, but if the city council shall be satisfied that said work has not been fully completed according to the plans and specifications, they shall make such order as they may deem proper, requiring the contractor or his assigns, or the officer or person in charge of the work, to complete the same within the time specified in such order. If any contractor, or his assigns, shall fail or refuse to comply with such order, the city council may cause such work as is necessary to complete the same, to be done by contract or by or under the direction of such officers of the city as it shall direct. When the work is so completed to the satisfaction of the city council, it shall accept the work and deduct from the original contract price, the cost of all work not done by the original contractor or his assigns in the completion of the same. The acts of the city council done in pursuance of the provisions of this section, shall be conclusive and binding upon any contractor and his assigns, and all property owners interested in such assessment, except in the case of fraud; and the acceptance of the work shall, after the period of six months from the date of such acceptance, be conclusive evidence of the regularity of all the proceedings in ordering the construction of any sewer or letting a contract therefor, and the acceptance of the work, and making and levying the special assessment therefor, as herein provided.

1471. Duties of auditor. [Ch. 168, '95.] § 17. The city auditor shall enter upon a book kept in his office for that purpose, and designated "record of special sewerage assessments," a description of the property, name of the owner and the amount of the assessment on each lot, part of lot and parcel of land, as shown upon the assessment roll, and shall minute thereon opposite each, the time of the filing of the written agreement, if any, provided in section fourteen of this act, and the time from which such assessment shall bear interest. If any sewer shall have been accepted by the city council prior to the expiration of the thirty days limited for filing such agreements, then when such time shall have expired and in all other cases forthwith upon the acceptance of the work, the city auditor shall extend opposite each assessment payable in installments, the amount of each installment and the time when each will become due. He shall thereupon make a certified list of all lots, parts of lots and parcels of land described in such assessment roll upon which the assessment shall then be due, showing the name of the owner of each and the amount of the assessment upon each lot, part of lot and parcel of land, and deliver the same to the city treasurer, with a warrant for the collection thereof and interest thereon as herein provided, signed by the mayor and countersigned by the city auditor, under the seal of the city. The biennial installments of any special assessment for sewerage levied under the provisions of this act, shall each be twenty per centum of such assessment, and shall become due respectively two, four, six, eight and ten years from the date of the acceptance of the work for which such assessment shall be levied. Whenever any installment of any special assessment for any sewer shall become due, the city auditor shall forthwith make a certified list of all lots, parts of lots and parcels of land, and the amount of the installment due upon each and the total amount of assessment due upon each remaining unpaid, and designate the date from which interest shall be computed, and deliver the same to the city treasurer, with a warrant for the collection of the installment then due, and interest upon the total amount unpaid, signed by the mayor and countersigned by the city auditor, under the seal of the city.

1472. Duties of treasurer. [Ch. 168, '95.] § 18. Upon the receipt by him of any such list and warrant, the city treasurer shall forthwith enter such list upon a book to be kept for that purpose and designated "treasurer's record of special sewerage assessments," and shall cause such list and warrant to be published once in each week for four successive weeks in the official newspaper of the city, with a notice that such assessments will be delinquent at the expiration of thirty days from the date of the first publication, specifying in such notice the date of delinquency, and that from and after the time when the same shall be

come delinquent a penalty of ten per centum will be added to the amount due upon each. The city treasurer shall include in any notice of the sale of lots and parcels of land for special assessments all special assessments for sewerage under the provisions of this act, which shall then be delinquent, and shall at any such sale sell all lots and parcels of land so advertised, in the manner provided by law for the sale of real property for delinquent special assessments. He shall issue to the purchaser a certificate of sale, and at the expiration of two years from the date of sale, if any lot or parcel so sold shall not have been redeemed, he shall issue to the purchaser, or his assigns, a deed substantially in the form set out in section thirty-two of article sixteen of chapter thirty-seven of the laws of eighteen hundred and ninety.

1473. Funds. [Ch. 168, '95.] § 19. Whenever any certificates of any special assessment under the provisions of this act shall have been issued by the city in payment for any sewerage work or for any purpose, the city auditor shall minute upon each of the lots and parcels of land contained in any list certified to the city treasurer the person to whom the same shall have been issued, and the proceeds of any and all such assessments shall be set apart and shall constitute the "sewerage certificate redemption fund," and shall be applied exclusively to the redemption of the certificate so issued. The proceeds of all other special sewerage assessments and all penalties on sewerage assessments collected by the city treasurer, and all moneys raised by any general or special sewerage tax, shall constitute the "sewerage fund," and shall be used by the city exclusively in the work of construction of sewerage or the repair or maintenance of any sewer constructed under the provisions of this act.

1474. Contractor entitled to compensation, when. [Ch. 168, '95.] § 20. In all cases, the work under the provisions of this act shall be under the supervision of the city engineer and a committee of the city council to be designated the "committee on sewers," and no contractor shall be entitled to recover compensation for any work executed by him in any form of action, unless such work shall have been accepted by the city council as herein provided.

1475. Definitions — lots — parcels — owner — street. [Ch. 168, '95.] § 21. The term "lot" as used in this act shall be deemed to be any tract of land described as a "lot" in the recorded plat of the city or any addition or subdivision thereof. Any block of land not subdivided into lots or in ownership shall be assessed for sewerage purposes to the center line thereof from the front upon which the assessment is calculated. Unplatted lands shall be assessed to a depth of one hundred and fifty feet from the street line upon which the assessment is calcu-

lated; provided, that if the owner of the frontage own less than one hundred and fifty feet in depth the assessment shall cover no more than the land belonging to the owner of such frontage. The word "owner," as used in this act, shall be construed to mean the person or corporation named as grantee in the latest deed of conveyance recorded in the office of the register of deeds of the county in which such city is located. The word "street" shall be construed to include "alley," "avenue," "public highway," or land acquired by condemnation proceedings for sewerage purposes.

1476. Private drain and sewers. [Ch. 168, '95.] § 22. It shall be the duty of the city council to see that proper drains and sewers are constructed from every lot and parcel of land in said city which in their judgment required it, and that such private drains or sewers are made to connect with the public sewers in a proper manner; and they shall have power to require such number of private drains or sewers to be constructed as they may deem expedient. Before ordering any private drains or sewers to be constructed, the city council shall cause plans and specifications showing the location, arrangement and forms and the materials to be used in the construction of all such private drains or sewers so ordered to be constructed, and the manner and plan of construction [connecting] the same with a public sewer, to be prepared by the city engineer and filed in his office for the examination of the parties interested; the work of construction shall be in all cases under the supervision of the city engineer. Whenever the city council shall deem it necessary that any private drains or sewers be constructed, they shall by resolution declare the necessity therefor, which resolution shall be published once in each week for two successive weeks in the official newspaper of the city, together with a notice to the owners of the lots and parcels of land from which such sewers and drains are to be constructed and connected with a public sewer, to construct the same within twenty days from the first publication of such notice; and in case the owner of any such lot or parcel of land neglects to construct such drain or sewer within said twenty days, the city council shall cause the same to be constructed either by contract or under the direction of such officers of the city as may be designated for that purpose, at the expense of the lot or parcel of land for the benefit of which the same shall be constructed. The cost of such drain or sewer shall be assessed upon the lot or parcel of land so chargeable therewith and collected in the manner provided for the assessment and collection of special assessments for the construction of sidewalks. Any person who has taken from the city a contract to construct a private drain or sewer from any lot or parcel of land or any officer or person directed by the city council to construct any such drain or sewer, shall be authorized to enter upon any

such lot or parcel of land and construct thereon such drain or sewer, and shall have free ingress and egress upon the same, with men for that purpose and to deposit all the necessary building materials, and generally to do and perform all things necessary to a complete execution of the work.

1477. Injunction, when maintained. [Ch. 168, '95.] § 23. No injunction to restrain proceedings under the provisions of this act shall be maintained unless the same shall be issued prior to making the contract herein provided for or the commencement of the work under order of the city council.

1478. City council authorized to acquire private property. [Ch. 91, '91.] § 1. The city council of any city of the first class shall have power to acquire by proceedings as provided by law for the taking or damaging of private property for municipal improvements the right to construct and maintain sewer pipes through and upon private property or in or along any stream of water not meandered but running wholly through private property, or to empty or discharge the sewerage of said city, or any part thereof, into any stream of water within the limits of said city; provided, however, that sewerage so emptied into any stream of water shall be so disposed of and managed as not to create any foul or obnoxious odors in the air over or along said stream.

ARTICLE 21. CORPORATE LIMITS.

1479. Extension of corporate limits. [Ch. 37, '90.] § 1. Any city now existing in this state that shall become incorporated under this act, may extend its corporate limits in the manner and by the different methods hereinafter provided.

1480. Two-thirds vote necessary. [Ch. 37, '90.] § 2. When a majority of property owners adjacent to the corporate limits of any city now existing in this state, petition the mayor and city council of said city to have any of their property, giving the description and boundaries of the same, included within the city limits, such city council may by a two-thirds vote of all the aldermen elect, annex the same and it shall become a part of the corporation of said city.

1481. May extend its boundaries. [Ch. 37, '90.] § 3. Any city which may hereafter become organized under this act may so extend its boundaries as to increase the territory within the corporate limits, not to exceed in any one year one-fourth the area, by a resolution of the city council passed by two-thirds of the entire council elect, particularly describing the land proposed to be included within the city limits.

setting forth the boundaries, and describing the lands platted by blocks and lots.

1482. Resolution must be published. [Ch. 37, '90.] § 4. The resolution of the city council shall be published in the official paper in the city for three consecutive weeks, and unless a written protest, signed by a majority of the property owners of said proposed extension, be filed with the city auditor within ten days after the last publication of such resolution the territory described in the resolution shall be included within and become a part of the corporation of said city.

1483. What lands may be included as additions. [Ch. 37, '90.] § 5. All lands laid out, platted or recorded as additions to any city in this state may be included within the corporate limits of said city by a resolution of such city council passed by two-thirds of the entire council elect; provided, that said lands are adjacent to the existing limits of said city.

1484. Plat of the city. [Ch. 37, '90.] § 6. Where the city limits of any city has been extended; as provided by this act, the mayor shall forthwith cause to be filed in the office of the register of deeds in the county wherein said city is located, a plat showing the corporate limits and boundaries of the city.

ARTICLE 22. ORDINANCES.

1485. City ordinances. [Ch. 37, '90.] § 1. When by this act the power is conferred upon the city council to do and perform any act or thing, and the manner of exercising the same is not specifically pointed out, the city council may provide by ordinance the details necessary for the full exercise of such power.

1486. City council may prescribe additional duties. [Ch. 37, '90.] § 2. The duties, powers and privileges of all officers of any character, in any way connected with the city government, not herein defined, and the defining by this act of the duties of the city officers, shall not preclude the city council from defining by ordinance further and additional duties to be performed by any such officers.

1487. City property exempt. [Ch. 37, '90.] § 3. Lands, houses, moneys, debts due the city, and property and assets of every kind or description belonging to the city, shall be exempt from taxation and sale on execution.

1488. Fines, penalties and forfeitures. [Ch. 37, '90.] § 4. All fines, penalties and forfeitures collected for offenses against the ordinances of the city, and all fines, penalties and forfeitures collected

within the city for misdemeanors, against the laws of the state, shall be paid to the officer or officers entitled by law to receive the same.

1489. Crime against the elective franchise. [Ch. 37, '90.] § 5. Any officer of the city or member of the city council who shall by himself or agent become a party to, or in any way interested in any contract, work or letting under the authority of the city, or who shall, either directly or indirectly, by himself or other party, accept or receive any valuable consideration or promise for his influence or vote, shall be fined in a sum not to exceed one thousand dollars, one-half of which shall go to the informer and the balance to be paid into the city treasury, by the officer collecting or receiving the same, and the said contract shall be null and void.

ARTICLE 23. INCORPORATION.

1490. What towns may incorporate under this act. [Ch. 37, '90.] § 1. Any incorporated town in this state, having a population of not less than one thousand inhabitants, may become incorporated as a city in like manner as in this act provided; but in all such cases the president and trustees of such town shall, respectively, perform the same duties relative to such a change of organization as is above required to be performed by the mayor and council of cities.

1491. Board of county commissioners may call an election on the petition of fifty voters. [Ch. 37, '90.] § 2. Whenever any area of contiguous territory in this state, not exceeding four square miles, shall have resident thereon a population of not less than five hundred inhabitants, which shall not already be included within any incorporated town or city, the same may become incorporated as a city in the manner following: Any fifty legal voters thereof may file in the office of the county auditor of the county in which the inhabitants reside a petition addressed to the board of commissioners of such county; and if the territory described in said petition shall be in more than one county, then the petition shall be addressed to the board of commissioners of the county where a greater part of the territory is situated; which petition shall define the boundaries of such proposed city, and state the number of inhabitants residing in such limits, and also state the name of such proposed city, and shall contain a prayer that the question be submitted to the legal voters residing within such limits, whether they will organize a city under this act. It shall be the duty of the board of commissioners of such county to fix a time and place within the boundaries of such proposed city at which an election may be held to determine such question; and such commissioners shall name the persons to act as judges in holding such election, and shall give notice

thereof by causing ten notices to be posted in public places within such proposed city; and section three of article one of this act shall be applicable to such election; provided, that the returns of such election shall be made to and canvassed by the board of county commissioners instead of the city council; and the result of such election shall be entered upon the records of such board of county commissioners. If a majority of the votes cast at such election shall be, "for city organization under general law," the inhabitants in such territory described in such petition shall be deemed to be an incorporated city under this act, and with the name stated in the petition.

1492. A town may change its organization to a city under this act. [Ch. 37, '90.] § 3. It shall be the duty of the president and board of trustees of any town which shall have voted to change its organization to a city under this act, to call and give notice of an election to elect city officers, and to designate the time and place or places of holding the same. Such notice shall be published in a newspaper, if there be one within the town, or posted in ten public places for at least twenty days before such election. Such president and trustees shall appoint the judges to hold said election, canvass the returns thereof, and cause the result to be entered upon the records of the town; and the provisions of this act relative to the election of city officers shall be applicable thereto; but at such election aldermen may be elected on a general ticket.

1493. Duty of county commissioners. [Ch. 37, '90.] § 4. In case of cities organizing under section two of this article, the county commissioners shall call and give notice of the election, and perform the same duties relative thereto as is above required to be performed by president and trustees of such town.

1494. Term of office. [Ch. 37, '90.] § 5. The city officers elected under either of the preceding sections shall hold their respective offices until the succeeding regular election for such offices, respectively, and until their successors are elected and qualified, as provided by this act.

1495. Special charter. [Ch. 37, '90.] § 6. When any city of this state shall adopt this act, any special charter that may have been granted to such city shall be null and void.

CHANGE OF CHARTER.

1496. Authority to alter or amend charter. [Ch. 86, '91.] § 1. That any municipal corporation, city, town, or village now existing under a special charter is hereby authorized and empowered to alter

or amend its charter upon submitting such proposed amendment or amendments to a vote of the legal electors within such municipal corporation, city, town or village in accordance with the provisions and requirements hereinafter enumerated in this act, always provided that such proposed amendment or amendments shall not be contrary to or in violation of any existing provisions of the laws of the state of South Dakota.

1497. When and by whom elections shall be called. [Ch. 86, '91.] § 2. That upon a petition duly signed by one-third of the legal electors of any municipal corporation, city, town or village now existing under a special charter, addressed to the city, town or village council, or board of trustees thereof, such city, town or village council, or board of trustees, shall at its next regular or special meeting cause to be prepared and issued a notice of election setting forth in full the proposed amendment or amendments to its charter, which said notice of election shall be published in the official newspaper or newspapers of such municipal corporation, city, town or village, and by posting printed or written notices thereof in five public places within each ward or voting precinct and said notice of election shall be published at least once a week for thirty days after the date of the first publication. The date of election shall be within one week after the last publication of said notice of election.

1498. Form of ballot. [Ch. 86, '91.] § 3. The form of ballot shall be (Here insert the proposed amendment.) "For the proposed amendment." "Against the proposed amendment."

1499. Majority of votes required to adopt amendment. [Ch. 86, '91.] § 4. That if upon such submission to a vote of any proposed amendment or amendments a majority of the votes cast shall be: "For the proposed amendment," then the same shall be considered as adopted and shall become a part of the charter, but if a majority of the votes cast shall be "Against the proposed amendment" then the same shall be void and of no effect.

1500. Manner of conducting election. [Ch. 86, '91.] § 5. The manner and form for conducting the elections held under the provisions of this act, counting the votes, making returns thereof and declaring the result, shall be the same as prescribed under the provisions of the charter of such municipal corporation, city, town or village.

DISSOLUTION.

1501. Petition — duty of city council — canvass of votes. [Ch. 35, '93.] § 1. That when an application signed by one-half the legal

voters of any incorporated city having less than one thousand inhabitants, shall be presented to the city council asking for a dissolution of the corporation, it shall be the duty of said city council to call a special election of the voters of said city by giving thirty days' notice thereof in a newspaper published in said city; or if there be no newspaper published in said city, then by posting said notice in three public places in said city, to determine whether such corporation shall be dissolved. The city council shall preside at such special election, and a poll shall be opened and said election be conducted as at any other corporation election, and the voters shall vote by ballots, said ballots having upon them either "For dissolution of the corporation" or "Against dissolution of the corporation." If the majority of all the votes given shall have thereon the words "For dissolution of the corporation," and such vote shall have been given by two-fifths of all the legal voters in said city, a statement of the vote signed by the mayor and attested by the city auditor shall be filed in the register of deeds' office of the county; and such city shall, at the expiration of six months from the time of holding such election, cease to be a corporation, and the property belonging to such corporation, after the payment of its debts and liabilities, shall be disposed of in such manner as the majority of the voters of such city at any special meeting thereof may direct. Where an election is had under this act, and a majority of the votes cast at such election shall be against the dissolution of said corporation, there shall be no other election held for the purpose of dissolving said corporation until five years after the date of said first election.

1502. Contracts and agreements not invalidated. [Ch. 35, '93.]

§ 2. No such dissolution shall affect the rights of any person in any contract or agreement to which such corporation is a party.

AID IN BUILDING COURT HOUSE.

1503. Cities may assist, how. [Ch. 33, '93.] § 1. That whenever a county seat has [been] located at any incorporated city, and the county has no court house it shall be lawful for such city to assist such county in building the same; provided, that the question of such assistance, and the amount of the same, shall first be submitted to and authorized by a majority of the electors of such city at an election called for that purpose.

1504. City council may cause special assessment and issue bonds. [Ch. 33, '93.] § 2. When a city shall decide to assist in building a

court house as provided in section one, the city council shall cause an assessment of all taxable property therein to be made, and thereupon may issue bonds in amounts of one hundred dollars each, bearing interest at not to exceed eight per centum per annum, for the amount of aid authorized in accordance with section one, and not to exceed the limit provided in the constitution. Such city shall have power to levy and collect taxes for the payment of the principal and interest of such bonds, and they shall be executed under the hand of the mayor and city clerk, or auditor, and the seal of the municipality.

1505. City may contract with county for use of court house. [Ch. 33, '93.] § 3. The bonds, or proceeds thereof, shall be used in constructing, or in aiding in the construction of a court house in such city on land owned by the county in which the same is located, and in consideration of such aid the city may contract with the county for the use of the court house for city purposes.

For aid in building railroads, see §§ 3955 et seq.

WEIGHTS AND MEASURES.

1506. Public weigher and measurer, how appointed — term of office. [Ch. 175, '93.] § 1. There shall be appointed in each city of the first class in this state, working under a special or a general charter, by the city council thereof, at least one public weigher and measurer, and in each city of the second class, by the city council thereof, at least one public weigher and measurer, and in all other incorporated towns and villages at least one such public weigher and measurer, and such public weigher and measurer shall be appointed in April of each year, and shall hold their office for one year and until their successors are appointed and qualified.

1507. Oath and bond of. [Ch. 175, '93.] § 2. Such public weigher and measurer shall, before entering upon the duties of his office, take the usual official oath, and shall execute to the city in which he is appointed, a bond in the sum of five hundred dollars conditioned for the faithful performance of his duties.

1508. Set of weights and measures furnished. [Ch. 175, '93.] § 3. Every city, town or village in which such public weigher is appointed, as provided by this act, shall furnish to each such public weigher and measurer a set of weights and measures of the United States standard, which shall be under the exclusive control of such weigher and measurer.

1509. Set of scales to be furnished. [Ch. 175, '93.] § 4. It shall be the duty of each such city, town or village to procure for each public

weigher and measurer therein appointed a set of true and exact scales having a capacity to weigh five tons at one time, and shall cause such scales to be set up and properly arranged for weighing in [a] convenient place in such city, town or village, to be selected by the city council, and such scales shall be under the control and management of the public weigher and measurer appointed to the same.

1510. Duty of public weigher. [Ch. 175, '93.] § 5. It shall be the duty of all public weighers appointed under the provisions of this act to immediately and correctly weigh all articles, loads or animals brought for that purpose to the scales over which he has control.

1511. Shall test measures. [Ch. 175, '93.] § 6. Such public weigher shall test by his standard weights any scales used by any person dealing with the public, and test all measures brought to him to be tested, by the standard measures in his possession, whenever requested so to do by any person interested in the correctness of such scales or measures.

1512. Certificate of public weigher. [Ch. 175, '93.] § 7. The public weigher and measurer shall give to every person for whom he does any weighing a certificate showing the gross amount thereof, and shall keep in his office a true and correct copy of the certificate so given, which certificate shall be prima facie evidence of the weight of the article, animal or load so weighed.

1513. Fees. [Ch. 175, '93.] § 8. The public weigher shall receive for each weight so made by him the sum of ten cents, and for each scale so tested by him the sum of twenty-five cents, and for each measure tested by him the sum of twenty-five cents, to be paid by the person for whom such test is made.

1514. Must keep scales in good condition. [Ch. 175, '93.] § 9. It shall be the duty of the public weigher and measurer to keep the scales over which he has control, by virtue of his office, in condition to make true and exact weighing.

1515. Penalty for using false certificate. [Ch. 175, '93.] § 10. Any weigher and measurer mentioned in this act who shall make any false or fraudulent certificate of any weighing or measuring done by him, or shall be guilty of any collusion with any other person or persons for the purpose of deceiving any person or persons in regard to the correctness of any scales, weights or measures shall be punished for each offense by a fine of one hundred dollars, or by imprisonment in the county jail for ninety days, or by both such fine and imprisonment.

ARTICLE 2. INCORPORATION OF TOWNS.

1516. Town site surveyed and platted. Persons intending to make application for the incorporation of a town as hereinafter provided shall cause an accurate survey and map to be made of the territory intended to be embraced within the limits of such town; such survey shall be made by a practical surveyor, and show the courses and distances of the boundaries thereof, and the quantity of land contained therein, the accuracy of which survey and map shall be verified by the affidavit of such surveyor written thereon or annexed thereto. [C. L. 1022.]

1517. Census to be taken. Such persons shall cause an accurate census to be taken of the resident population of such territory as it may be on some day not more than thirty days previous to the time of presenting such application to the board of county commissioners as hereinafter provided; which census shall exhibit the name of every head of a family residing within such territory on such day, and the number of persons then belonging to every such family; and it shall be verified by the affidavit of the person taking the same. [C. L. 1023.]

1518. Same open to inspection. Such survey, map and census when completed and verified as aforesaid shall be left at some convenient place within said territory for examination by those having an interest in such application, for a period of not less than thirty days. [C. L. 1024.]

1519. Petition for incorporation. Such application shall be by petition subscribed by the applicants, and also by not less than one-third of the whole number of qualified voters residing within such territory; and such petition shall set forth the boundaries thereof, the quantity of land embraced according to the survey, and the resident population therein contained according to said census taken; and the said petition shall have attached thereto or written thereupon affidavits verifying the facts alleged therein, and it shall be presented at the time indicated in the notice of such application or as soon thereafter as the board can receive and consider the same. [C. L. 1025.]

1520. County commissioners to make order. The board of county commissioners in hearing such application shall first require proof either by affidavit or by oral examination of witnesses before them that the said survey, map and census were subject to examination in the manner and for the period required by section ten hundred and twenty-four; and if said board be satisfied that the requirements of this act have been fully complied with they shall then make an order declaring that such

state shall with the assent of the qualified voters thereof as hereinafter provided be an incorporated town by the name specified in the application aforesaid, which name shall be different from that of every other town in this state, and they shall also include in such order a notice for a meeting of the qualified voters resident in said proposed town, at a convenient place therein to be by them named, on some day within one month therefrom, to determine whether such state shall be an incorporated town. [C. L. 1026.]

1521. Notice to be given. The board shall cause ten days' notice of such meeting by publication in a newspaper if one be published in the county, and by posting up copies of said notice not less than ten in number at the most public places in said proposed incorporated town. [C. L. 1027.]

1522. Opening of polls. At the meeting of the qualified voters as herein provided polls shall be opened at nine o'clock in the forenoon of such day and shall be kept open until four o'clock in the afternoon, when they shall be closed. [C. L. 1028.]

1523. Election of inspectors. The voters at such meeting shall first proceed to the election of three inspectors who after being duly chosen and qualified, and one of their number elected clerk, shall without delay proclaim to the meeting that the poll is now opened and that they are ready to receive the ballots of the voters. [C. L. 1029.]

1524. Manner of voting. The qualified voters of said proposed incorporated town shall vote by ballot having thereon the words "for incorporation, yes;" or the words "for incorporation, no;" and if a majority of the ballots given at such meeting shall have thereon the word "no," the voters of such proposed town shall be deemed not to have assented to the incorporation thereof as a town, and no further proceedings shall be had in relation thereto; but if a majority of such ballots shall have thereon the word "yes," such territory shall from that time be deemed an incorporated town, to have continuance thereafter by the name and style specified in the order made by the board of county commissioners as hereinbefore provided; and the inspectors of such meeting shall make a statement showing the whole number of ballots given at such meeting — the number having the word "yes" thereon, and the number having the word "no" thereon — which statement shall be verified by the affidavit of such inspectors and shall be returned to such board of commissioners at their next session, who if satisfied of the legality of such election shall make an order declaring that said town has been incorporated by the name adopted, which order shall be conclusive of such incorporation in all suits by or against such cor-

poration; and the existence of such corporation by the name and style aforesaid shall thereafter be judicially taken notice of in all courts and places in this state without specially pleading or alleging the same. [C. L. 1030.]

1525. Division into districts. Such inspectors when they shall have returned the statement as aforesaid shall next proceed to divide said town into not less than three nor more than seven districts, having due regard to the equitable apportionment of the population among the same and the convenience and contiguity of such district. [C. L. 1031.]

1526. Notice of election. They shall also give ten days' notice by publication in a newspaper if one be printed within such town, and by posting such notices in five public places therein, of an election to be held in such town for the purpose of electing officers thereof, naming the place therein and the day upon which the same shall be had, but such day named shall be within twenty days from the posting of such notices. Every subsequent notice of a corporation election shall be given in like manner by the clerk of said town. [C. L. 1032.]

1527. Annual election. An election for officers of said town after the first election shall be held annually on the first Monday of May of each year, and at every such election the preceding board of trustees or any of them shall act as the inspectors thereof. [C. L. 1033.]

1528. Polls open what time. At all elections in said town the polls shall be open at nine o'clock in the forenoon and shall not be finally closed until four o'clock in the afternoon of said day. [C. L. 1034.]

1529. Inspectors to be judges. Such inspectors shall preside at such first election and be the inspectors thereof, and in the receiving and canvassing of votes shall be governed by the laws then existing, so far as they are applicable, for the election of county officers. [C. L. 1035.]

1530. Officers to be elected. [Ch. 182, '95.] There shall be elected at the first and at every subsequent election one trustee from each district in said town, and also a clerk, assessor, treasurer, marshal, justice of the peace and one overseer of highways for each road district in said town, who shall respectively hold their offices until the first Monday in May next following, or until their successors are elected and qualified; provided, however, that nothing herein contained shall prevent the respective offices of clerk, treasurer, assessor, and marshal from being held by one and the same person. [C. L. 1036.]

1531. Highest number of votes elect — duty of inspectors. The persons having the highest number of votes for the office of trustee shall be declared elected as such trustees, and the persons who receive the highest number of votes respectively for clerk, marshal, assessor, treasurer, and justice of the peace, as designated by the ballot for such office, shall be declared so elected; and if two or more shall have an equal and highest number of votes, and there be no choice, the inspectors of such election shall forthwith determine by lot which shall be deemed elected; and it shall be the further duty of such inspectors to make a certified statement over their own signatures, of the persons elected to fill the several offices in said town, and file the same with the county clerk in the county thereof within ten days after the date of such election; and no act or ordinance of any board of trustees chosen at such election shall be valid until the provisions of this section are substantially complied with. [C. L. 1037.]

1532. County clerk record statement of expense. It shall be the duty of the county clerk of the proper county to make a record of such certified statement, for which services there shall be paid the same fee as is allowed for similar services in other cases. [C. L. 1038.]

1533. Vacancy, how filled. A vacancy occurring in the board of trustees or in any corporation office shall be filled by appointment at a special meeting of the trustees called for that purpose, but such appointment shall be made from the district if a trustee be appointed in which the vacancy has occurred, and shall in no case extend beyond the annual elections provided for in this act. [C. L. 1039.]

1534. Oath of officers. The board of trustees chosen as aforesaid shall elect a president from their own body, and such president, trustees and all other officers elect shall within five days after such election take and subscribe before some person authorized to administer the same the usual oath or affirmation for the faithful performance of the duties of their respective offices. [C. L. 1040.]

1535. Board of trustees a body corporate. The president and trustees of such town and their successors in office, shall constitute a body politic and corporate, by the name of the "town of," and shall be capable in law to prosecute and defend suits to which they are a party. [C. L. 1041.]

1536. Notice of special meetings. Special meetings of the qualified voters may be called by the clerk by order of the trustees of said town, by giving ten days' notice thereof in a newspaper if any be printed in such town, otherwise by posting up such notices in five public places therein, and such notice shall state the object for which each meeting is called. [C. L. 1042.]

POWERS OF THE BOARD OF TRUSTEES.

1537. Powers specified. The board of trustees shall have the following powers, viz.:

1. To have a common seal and alter the same.
2. To purchase, hold or convey any estate real or personal for the use of the corporation, so far as such purchase may be necessary to carry out the objects contemplated by this act.
3. To organize fire companies, hook and ladder companies, to regulate their government and the times and manner of their exercise; to provide all necessary apparatus for the extinguishment of fires; to make owners of buildings provide ladders and fire buckets, which are hereby declared to be appurtenances to the real estate and exempt from execution, seizure or sale; and if the owner shall refuse to procure suitable ladders or fire buckets after reasonable notice the trustees may procure and deliver the same to him; and in default of payment therefor may recover of said owner the value of said ladder or fire buckets, by suit before the justice of the peace of the town, incorporated by the provisions of this act, and costs accrued thereby; to regulate the storage of gunpowder and other materials; to direct the construction of a place for the safe deposit of ashes; and may under any order by them, entered upon the proper book of the board, visit or appoint one or more fire wardens to visit and examine at all reasonable hours dwelling houses, lots, yards, inclosures and buildings of every description, discover if any of them are in a dangerous condition and provide proper remedies for such dangers; to regulate the manner of putting up stoves and stove pipes; to prevent out-fires and the use of fireworks and the discharge of firearms within the limit of said corporation or such parts thereof as they may think proper; to compel the inhabitants of such town to aid in the extinguishment of fire and prevent its communication to other buildings, under such penalties as are in this act provided; to construct and preserve reservoirs, wells, pumps, and other water works, and to regulate the use thereof, and generally to establish other measures of prudence, for the prevention or extinguishment of fires as they shall deem proper.
4. To declare what shall constitute a nuisance and to prevent, abate and remove the same and take such other measures for the preservation of the public health as they shall deem necessary.

[Ch. 182, '95.] 5. To restrain from running at large cattle, swine or other animals, and to establish pounds and to appoint pound masters and to make regulations concerning the impounding of animals.

6. To restrain and prohibit gambling and other disorderly conduct; to suppress and prohibit the keeping of houses of ill-fame; and to authorize the seizure and destruction of gambling apparatus.

7. To license, regulate or restrain auction establishments, traveling peddlers, public exhibitions and the sale of intoxicating liquors within the corporation.

8. To establish and regulate markets and build market houses and direct the location of slaughter houses.

9. To lay out, open, grade and otherwise improve the streets, alleys, sewers, sidewalks and crossings, and to keep them in repair and to vacate the same.

[Ch. 182, '95.] 10. To appoint fire wardens, not exceeding three.

11. To prohibit incumbrance of the sidewalks of said town, and riding or driving thereon except to cross the same.

12. To provide means for keeping and preserving the peace and quietness of such town.

13. To insure the public property of such town.

14. To purchase, lay out and regulate cemeteries.

15. To plant trees upon public grounds and along the streets of such town, and provide for their culture and preservation, and to inclose any public square or other public ground within said corporation.

16. (Repealed by ch. 41, '99. See § 2299a.)

17. To levy and collect annually a tax of one dollar on each male dog and two dollars on each female dog owned and kept within such town.

18. To make and establish such by-laws, ordinances and regulations not repugnant to the laws of this state as may be necessary to carry into effect the provisions of this act, and to repeal, alter or amend the same as they shall seem to the board of trustees of such town to require; but every by-law, ordinance or regulation unless in case of emergency shall be published in a newspaper in such town if one be printed therein, or posted in five public places at least ten days before the same shall take effect.

19. To enact fines, penalties and forfeitures for violations of this act or of any by-law or ordinance by them established, not exceeding ten dollars for any one offense, which may be recovered by action in the name of the corporation, but such board may remit the whole or any part of the fine, penalty or forfeiture; provided, that the fine assessed for the violation of any ordinance requiring a license shall not be less than the amount required to be paid for such license although it may exceed the sum of ten dollars.

20. To authorize the construction and maintenance of street railways, water mains and water pipes and gas mains and gas pipes along

or through the streets and alleys within the corporate limits, and to grant franchises and rights to persons, associations or corporations for such purposes, and to regulate the same. [C. L. 1043.]

1538. Jurisdiction over public grounds. The trustees shall have jurisdiction over any commons or public grounds belonging to said town, and shall have power to regulate, with the consent of the majority of the owners thereof, the banks, shores and wharves of that portion of any navigable streams within the corporate limits, but no ferries heretofore or which may hereafter be established by law shall be prejudiced or in any manner affected by the provisions of this act. [C. L. 1044.]

AUDITING AND PAYMENT OF ACCOUNTS.

1539. Appropriation of moneys. All moneys however derived belonging to such corporation shall only be appropriated for such objects and defraying such expenses as accrue or necessarily arise in the exercise of powers granted by this act. No appropriation shall be made without an order to that effect entered upon a proper book to be kept for that purpose by such board. [C. L. 1045.]

1540. Auditing accounts. No account or claim against said town shall be audited or allowed by the board of trustees unless it be made out fully and itemized, and every such account audited shall be numbered from one upwards in the order they were presented and a memorandum of the same entered upon a book to be kept exclusively for that purpose. [C. L. 1046.]

1541. Payment of accounts. No account or claim shall be paid unless audited and allowed by the board as aforesaid, and no moneys shall be drawn from the treasury except upon a warrant from the treasurer signed by the president of said town and attested by the clerk thereof. [C. L. 1047.]

CORPORATE INDEBTEDNESS.

1542. Contracting loans. No incorporated town under this act shall have power to borrow money or incur any debt or liability unless the citizen owners of five-eighths of the taxable property of such town, as evinced by the assessment roll of the preceding year, petition the board of trustees to contract such debt or loan, and such petition shall have attached thereto an affidavit verifying the genuineness of the signatures to the same; and for any debt created thereby the trustees shall add to the tax duplicate of each year successively a levy sufficient to pay the annual interest on such debt or loan, with an addition of not less than five cents on the hundred dollars to create a sinking fund for the liquidation of the principal thereof. [C. L. 1048.]

1543. Bond of officers. The clerk, assessor, treasurer, marshal and justice of the peace shall within ten days after their election or appointment, each and severally give bonds payable to the town of with freehold sureties to such an amount as the board of trustees shall direct, but the bond of the treasurer shall be for double the amount of the estimated tax for the current year. [C. L. 1049.]

1544. Records delivered to successors. All books, vouchers, moneys or other property belonging to the corporation and in charge or possession of any officer of the same shall be delivered to his successor when qualified. [C. L. 1050.]

LEVY AND COLLECTION OF TAXES.

1545. Special taxes a lien. All taxes assessed by the board of trustees of towns incorporated under the provisions of this act for the grading, paving or otherwise improving the streets of the town, or for building or repairing sidewalks of the town, shall be a lien on the lots or pieces of ground subject to the same from the time the amount thereof shall have been ascertained; and in case any error or irregularity should occur in levying or collecting any such tax, proceedings may be taken anew so as to obviate any such error or irregularity. [C. L. 1059.]

1546. How collected. Such special tax shall be due and may be collected as the improvements are completed in front of or along or upon any block, lot or piece of ground, or at the time the improvement is completed, according as shall be provided in the ordinance levying the tax. Such tax if not paid within thirty days after becoming due shall have added thereto a penalty of ten per centum and shall bear interest from the day of sale at the rate of twenty-five per centum per annum, to be computed on the tax, penalty and costs of sale. [C. L. 1060.]

1547. Costs included in special assessments. The cost and expenses of grading, filling, paving, macadamizing, culverting, curbing and ditching or otherwise improving streets, sidewalks, alleys, avenues or lanes at their intersections, may be included in the special tax levied for the improvement of any street, sidewalk, alley, avenue or lane as may be deemed best by the board of trustees of such town. [C. L. 1061.]

1548. Duty of town marshal. When the special tax is levied it shall be the duty of the marshal of such town to calculate the amount of tax on any block, lot or piece of ground and file a statement thereof with the town clerk, who shall, as soon as the tax is due on any block, lot or piece of ground, issue a certificate describing it, its number and lot and block, and stating the amount of tax due thereon and the name of.

the person entitled to the same, and the purpose for which said tax was levied, and such certificate so given shall be the tax warrant of the collector, and shall be by the clerk placed in the hands of the treasurer, and he shall keep a record of all such warrants and enter on the margin of such record all the amounts paid and by whom paid. In case the town treasurer shall be unable to collect such taxes on or before the first day of September in each year, he shall certify the amount of such special tax with a description of the property, and the purpose for which the tax was levied, to the county treasurer, who shall thereupon advertise and include the same in the general tax sale to be held next thereafter. [C. L. 1062.]

1549. Duty of town assessors. [Ch. 182, '95.] § 7. The town assessors shall perform all the duties in relation to the assessing of property for the purpose of levying all town, school, county and state taxes. Upon the completion of the assessment roll he shall return the same to the town clerk, who shall lay the same before the board of review or equalization at their regular meeting.

1550. Assessment roll open to inspection. [Ch. 182, '95.] § 8. The assessor shall be governed by the same laws and regulations as county and township assessors, and shall return his assessment roll on or before the second Tuesday in June in each year. Said assessment roll shall be open to the inspection of all persons interested until the meeting of the board of review or equalization.

1551. Notice of meeting of board of review. [Ch. 182, '95.] § 9. The assessor shall cause at least ten days' previous notice of the time and place of the meeting of the town board of review, by posting notice in at least three public places in each town, but the failure to give such notice or hold such meeting shall not vitiate such assessment, except as to the excess of valuation of tax thereon shown to be unjustly made or levied.

1552. Town board of equalization — meetings. [Ch. 182, '95.] § 10. The board of trustees of each town shall constitute the board of equalization and shall meet on the fourth Monday of June at the office of the town clerk, and shall perform the duties of such board as prescribed in section thirty-eight of chapter fourteen of the laws of eighteen hundred and ninety-one, which list when equalized shall be certified to the county auditor in the manner provided by the general law of assessment and taxation.

1553. Trustees to determine amount of general tax. [Ch. 182, '95.] § 11. The board of trustees shall during the month of July and before the twentieth day thereof determine the amount of the general tax for

the current year, which amount shall be certified by the town clerk to the county auditor on or before the twentieth day of July in each year.

1554. General laws to govern, when. [Ch. 182, '95.] § 12. All matters pertaining to assessment and taxation not herein otherwise provided for shall be governed by the general law of the state relative thereto.

1555. Powers and duties of trustees, clerk and overseer of highways. [Ch. 182, '95.] § 13. The trustees, clerk and overseer of the highways of each incorporated town shall have the same powers and duties in regard to management, care and repair of the highways, streets and bridges, and the assessment and collection of road taxes within their respective districts as are by law conferred upon township supervisors, clerks and overseers of highways as embraced, so far as applicable, in sections twelve hundred and sixty-six to twelve hundred and ninety-five inclusive of the compiled laws.

1556. Powers of board of trustees. [Ch. 182, '95.] § 14. The board of trustees shall have power to lay out, establish, open, alter, widen, extend, grade, pave or otherwise improve roads, streets, alleys, avenues, sidewalks, wharves, parks and public grounds and vacate the same and to construct and keep in repair bridges, culverts and sluiceways; and they may divide their respective towns into so many road districts as they may deem convenient by writing under their hand to be left with the town clerk and by him entered in the town records and may assign to each of said road districts such of the inhabitants liable to work on highways as they think proper having regard to proximity of residence, and may require the road overseers as often as they deem necessary, to warn all persons liable to work on roads, to come and work thereon, with such tools, wagons, or teams as the said commissioners or either of them shall direct.

POWERS AND DUTIES OF OFFICERS.

1557. Duty of town treasurer. The treasurer of every incorporated town shall so keep his accounts as to show where and from what sources all moneys paid him have been derived, and to whom and when such moneys or any part thereof have been paid. The treasurer shall grant all licenses authorized by this act, upon the presentation of the receipt of the marshal that the money therefor has been paid to said marshal. His books, accounts and vouchers shall at all times be subject to the examination of the board of trustees, and it is hereby made their duty to examine the same at a regular meeting of such board on some day between the first and last Mondays of April in each year, and have settlement with the said treasurer. [C. L. 1063.]

1558. Publication of statement. It shall be the duty of the board of trustees immediately after the annual settlement with the treasurer of said corporation to publish in a newspaper if one be printed therein, or if there be no newspaper then by posting in three or more public places, an exhibit of the receipts and expenditures specifying the sources of such receipts, what appropriations were made, for what objects, and the specific amount of each. [C. L. 1064.]

1559. Duties of town clerk. The clerk of such town shall have the custody of the records, books and papers of the board of trustees and shall attend all meetings and record the proceedings of said board, and shall perform all other duties appertaining to his office, as required of him by the by-laws. [C. L. 1065.]

1560. Powers of marshal. The marshal of such town shall be a peace officer and shall possess the powers and be subject to the liabilities possessed and conferred by law upon sheriffs in executing the orders of the trustees or enforcing the by-laws and ordinances of said town. [C. L. 1066.]

1561. Trustees superintend grading. The board of trustees shall superintend the grading, paving and improving of streets and the building and repairing of sidewalks. [C. L. 1067.]

1562. Fire wardens — duties. The fire wardens shall attend all fires and give their personal superintendence to extinguish the same, and do all other acts required by the by-laws, and obey all orders given by the board of trustees in relation to the fire department. Trustees shall by virtue of their office be fire wardens [C. L. 1068.]

1563. Compensation of town officers. The trustees, clerk, assessor, treasurer, marshal and justice of the peace shall respectively receive for their services such compensation as the board of trustees in their by-laws may decide; and said board shall cause to be paid other officers of such town for their services a just and reasonable compensation. [C. L. 1069.]

OF SIDEWALKS AND STREETS.

1564. Petition. Whenever two-thirds of the resident owners in number or in value of real estate bounding both sides of any street not less than one square, shall petition to have such street graded, paved or otherwise improved or the sidewalk thereof built or repaired, or when two-thirds of the owners of real estate in number or in value on one side of such street shall desire a sidewalk on that side, it shall be the duty of such board to levy and cause to be collected by tax upon the owners of real estate, lot or lots on such street or part of street such a sum of money as is necessary for the improvement of said street or

sidewalk or the building of said sidewalk in front of each of the respective lots or at the side of any corner lot or lots or real estate; provided, however, that no real estate, lot or lots shall be taxed as aforesaid for sidewalks built or improvements done at a greater distance from the front of said real estate, lot or lots than one-half the distance to the opposite side of said street. [C. L. 1070.]

1565. No one exempt from highway tax. Nothing contained in this act shall exempt the inhabitants of any town from the payment of highway taxes legally assessed, nor from the formation of one or more road districts irrespective of the corporate limits of such town. [C. L. 1071.]

EXTENSION OF CORPORATE LIMITS.

1566. Addition to corporations. When two-thirds of the owners of a tier of out-lots adjoining an incorporated town shall sign a petition asking that the corporate limits of said town be extended so as to include said out-lots, the board of trustees of said town shall cause said petition to be recorded and make an order that said tier of out-lots shall thereafter be included and constituted a part of said corporation, and the inhabitants residing thereon and owners thereof shall be subject to and entitled to all privileges of said corporation. [C. L. 1072.]

1567. Annexing additional lots. Whenever there shall be lots laid off and platted adjoining such town, and a record of the same is made in the register of deeds' office of the proper county, the trustees may by a resolution of their board extend the boundary of such town so as to include such lots; and the lots thus annexed shall thereafter form a part of such town and be within the jurisdiction thereof. The trustees shall immediately thereafter file a copy of such resolution, together with a plat and map of survey defining the boundaries of such addition, in the office of the register aforesaid. [C. L. 1073.]

1568. Proceeding. When any town shall desire to annex contiguous territory thereto not platted or laid or recorded, the trustees shall present to the board of county commissioners a petition setting forth the reasons for such annexation, and shall accompany the same with a map or plat accurately describing by metes and bounds the territory proposed to be attached, which shall be verified by affidavit. Such trustees shall give thirty days' notice by publication in a newspaper printed in such town, if any, otherwise in the county, or if none there, by posting up such notice in five or more public places within the corporation; a copy of such notice shall be served on the owner or owners of such territory if known and are residents of the county. [C. L. 1074.]

1569. County commissioners make order. The board of county commissioners upon the reception of such petition shall consider the same

and shall have the testimony offered for or against such annexation, and if after inspection of the map and the testimony being heard such board is of the opinion that the prayer of such petition should be granted it shall cause an entry to be made on the order book specifying the territory annexed, with the boundaries thereof according to the survey, which entry or an attested copy thereof shall be conclusive evidence in all courts of such annexation. [C. L. 1075.]

DISSOLUTION OF CORPORATION.

1570. Dissolution of corporation. When an application signed by one-third of the legal voters of any incorporated town shall be presented to the board of trustees in writing asking for a dissolution of the corporation, setting forth the reasons therefor, it shall be competent for said board if they deem the reasons good to call a meeting of the voters of said town by giving ten days' notice thereof as provided in this act, to determine whether such corporation shall be dissolved. The board of trustees shall preside at such meeting and a poll shall be opened as at any other corporation election, and the voters shall vote by ballot, "yes" or "no." If a majority of all the votes given shall have thereon the word "yes," and such votes shall have been given by two-fifths of all the legal voters in such town, a statement of the vote signed by the president and attested by the clerk shall be filed in the register of deeds' office of the county, and such town shall at the expiration of six months from the time of holding such meeting cease to be a corporation, and the property belonging to such corporation after the payment of its debts and liabilities shall be disposed of in such manner as a majority of the voters of such town at any special meeting thereof may direct. [C. L. 1076.]

1571. Dissolution not affect existing contract. No such dissolution shall affect the rights of any person in any contract or agreement to which such corporation is a party. [C. L. 1077.]

MISCELLANEOUS.

1572. Proof of compliance. Whenever any suit shall be instituted by an incorporated town it shall not be required to show its compliance with any of the provisions of this act as to its organization or publication of by-laws or ordinances unless the same is controverted by affidavit. [C. L. 1078.]

1573. Incorporated towns may adopt this act. Any town heretofore incorporated by special act may by a resolution of the board of trustees or other municipal board thereof entered upon the record book of the corporation become incorporated under this act; but the same shall be

deemed a surrender of all the rights and franchises acquired under any former act of incorporation or acts amendatory thereto. A copy of such resolution shall be filed with the register of deeds of the proper county and entered by him of record. Trustees and other officers of such incorporated towns, by whatever name designated, performing duties of a like nature to those required of officers created by this act shall continue to be the officers of such town by the name as specified in this act until superseded by the annual election. [C. L. 1079.]

1574. When debt not nullified. No debt or liability due to or from any incorporated town shall be unpaid by reason of such town being brought within the provisions of this act and becoming incorporated under it. [C. L. 1080.]

PROCEEDINGS IN TOWN JUSTICE'S COURT.

1575. Jurisdiction. Justices of the peace of any town heretofore or hereafter organized under the provisions of this article shall have exclusive jurisdiction to hear and determine all offenses against the ordinances of such town, and concurrent jurisdiction with all other justices in all civil cases and in all criminal cases for offenses against the laws of the state, committed within the county where such town is situated; and whenever complaint shall be made to the justice of the peace of such town, upon oath or affirmation of any person competent to testify against the accused, that an offense has been committed of which such justice of the peace has jurisdiction, said justice of the peace shall forthwith issue a warrant for the arrest of the offender which warrant shall be served by the marshal of the town, the sheriff or any constable of the county, or any person specially appointed by the justice for the purpose, and in all preliminary examinations before such justice he shall be governed by the code of criminal procedure, and in all trials before such justice for offenses against the state he shall be governed by the justice's code. [C. L. 1081.]

1576. Duty when defendant appears. When any person shall be brought before such justice of the peace upon such warrant it shall be his duty to hear and determine the complaint alleged against the defendant. [C. L. 1082.]

1577. Postponement proceedings. Upon good cause shown such justice of the peace may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into bond with sufficient security conditioned that he will appear before such justice of the peace at the time and place appointed, and then and there to answer the complaint alleged against him. [C. L. 1083.]

1578. Summon witnesses. It shall be the duty of such justice of the peace to summon all persons whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment if necessary, and when a trial shall be continued by such justice of the peace he may verbally notify such witnesses as may be present at the continuance to attend before him to testify in the cause set for trial, and such verbal notice shall be as valid as a summons. [C. L. 1084.]

1579. Trials — procedure. All trials before such justice of the peace shall be governed by the criminal procedure applicable to justices' courts. [C. L. 1085.]

1580. Judgment. In all trials for offenses under the ordinances of the town incorporated under and by the provisions of this act, if the defendant is found guilty such justice of the peace shall render judgment accordingly. It shall be part of the judgment that the defendant stand committed until the judgment be complied with, in no case to exceed one day for every seventy-five cents of the fine and costs assessed against said defendant. [C. L. 1086.]

1581. Court remains open. Such justice of the peace shall be a conservator of the peace and his court shall be opened every day except Sunday to hear and determine any and all cases cognizable before him; and he shall have power to bring parties forthwith before him for trial; and no act shall be performed by him on Sunday except to receive complaints, issue process and take bail. [C. L. 1087.]

1582. Appeals. In all cases before such justice of the peace an appeal may be taken by the defendant to the district court of the county in which such town is situated; but no appeal shall be allowed unless such defendant shall within ten days enter into recognizance with sufficient securities to be approved by such justice of the peace, conditioned for the payment of the fine and costs and costs of appeal, and that he will render himself in execution thereof if it should be determined against the appellant. [C. L. 1088.]

1583. Punishment. Any person convicted before such justice of the peace of an offense under the ordinances of the town shall be punished by fine as may be regulated by ordinances. [C. L. 1089.]

1584. Powers of justice — exceptions — jury. The justice of the peace of the town organized under the provisions of this act shall have power to enforce obedience to all orders, rules, judgments and decrees made by him; and he may fine or imprison for contempt offered to him while holding his court or to process issued or orders made by him, in the same manner and to the same extent as provided for courts of

justice of the peace. On the trial of any case in said court it shall be the duty of such justice of the peace to sign any bill of exceptions rendered to the court during the progress of such trial provided the truth of the matter be fairly stated; and thereupon said exceptions shall be entered in the record of such trial and become a part thereof; and any final conviction, sentence or judgment of said court may be examined by the circuit court of the county in which such town is situated, on writ of error which may be allowed by the circuit court or the judge thereof for sufficient cause, and proceedings may be stayed as may be deemed reasonable, and the revising court shall in such proceedings take judicial notice of all the ordinances of such town. Cases before such justices of the peace, arising under town ordinances, shall be tried and determined by such justice of the peace without the intervention of a jury unless the defendant demand a trial by jury; and when a demand shall be so made the trial shall be by jury of twelve citizens of such town having the qualifications of jurors, who shall be summoned by the marshals of such towns upon a venire issued by such justice of the peace. The venire for a jury shall contain eighteen names, three of which shall be stricken off the list by the defendant and three by the marshal of such town; the remaining twelve names shall constitute a jury for the trial of a cause. If there is any challenge for cause such justice of the peace shall try the question in a summary manner, who may examine challenged jurors under oath. [C. L. 1090.]

1585. Fees of jurors. Such jurors shall be paid fifty cents for their services as jurors in each case. [C. L. 1091.]

1586. Costs taxed to defendant. In case the defendant is found guilty the costs of the jury shall be taxed against him as a part of the costs of the case and the amount thereof shall be a part of the judgment. [C. L. 1092.]

1587. Proceedings. In all cases not herein specifically provided for the process and proceedings of the court of such justice of the peace shall be governed by the laws regulating proceedings in justices' courts in criminal cases. [C. L. 1093.]

ORDINANCES.

1588. How proven. All ordinances of the town may be proven, by the ordinance book of the town or the certificate of the clerk of the town under seal of the town; and when printed in a newspaper or published in a book or pamphlet form and purported to be published or printed by the authority of the town shall be read and received in all courts and places without further proof. [C. L. 1094.]

ARTICLE 3. TOWN AND CITY PLATS.

GENERAL PROVISIONS.

1589. Survey and plat made. When any person wishes to lay out a town in this state or an addition or subdivision of out-lots, such person shall cause the same to be surveyed and a plat thereof made which shall particularly describe and set forth all the streets, alleys, commons or public grounds and all in and out-lots or fractional lots within or adjoining said town, giving the names, width, courses, boundaries and extent of all such streets and alleys. [C. L. 1095.]

1590. Lots and squares numbered. All the in-lots intended for sale shall be numbered in progressive numbers or by squares in which they are situated, and their precise length and width shall be stated on said map or plat; and out-lots shall in like manner be surveyed and numbered and their precise length and width stated on the plat or map, together with any streets, alleys or roads which shall divide or border the same. [C. L. 1096.]

1591. Base line, how formed. The proprietor or proprietors of the town, addition or subdivision of out-lots, by themselves or agents, shall at the time of surveying and laying the same cause to be planted and firmly fixed in the ground on the line of the main streets of said town two good and sufficient stones of such size and dimension as the surveyor shall direct, said stones to be at least two hundred and fifty yards apart; and the line thus formed shall be a base line from which to make future surveys; and the point or points where the same may be found shall be distinguished on the plat or map. [C. L. 1097.]

1592. Plat certified and acknowledged. The plat or map after having been completed shall be certified by the surveyor and the officers; and every person or persons whose duty it shall be to comply with the foregoing requisitions shall at or before the time of offering said plat or map for record acknowledge the same before any person authorized to take the acknowledgment of deeds. A certificate of such acknowledgment shall by the officer taking the same be indorsed on the plat or map, which certificate of the survey and acknowledgment shall also be recorded and form a part of the record. [C. L. 1098.]

1593. Lands donated for streets. When the plat or map shall have been made out and certified, acknowledged and recorded as required by this chapter, every donation or grant to the public, or any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on said plat or map, shall be deemed in law and equity a sufficient conveyance to vest the fee-

simple of all such parcel or parcels of land as are therein expressed, and shall be considered to all intents and purposes a general warranty against such donor or donors, their heirs or representatives, to said donee or donees, grantee or grantees, for his, her or their use for the uses and purposes therein named, expressed and intended, and no other use and purpose whatever; and the land intended to be used for the streets, alleys, ways, commons or other public uses in any town or city or addition thereto shall be held in the corporate name thereof in trust to and for the use and purposes set forth and expressed or intended. [C. L. 1099.]

1594. Record of plats in unorganized counties. If the county in which said town or addition is situated shall not be organized, then in that case the plat or map shall be recorded in the register's office of that county to which the county in which said town is situated shall at the time be attached for judicial purposes. [C. L. 1100.]

1595. Apply to towns already laid out. When any town, addition or subdivision has been heretofore laid out and lots sold in this state by agents or proprietors, and a plat or map of the same has not been acknowledged and recorded in conformity with acts heretofore in force, it shall be the duty and it is hereby required of the county commissioners or a majority of them in such county, or proprietor or proprietors who have laid out the same, or his, her or their legal representatives, to have the same fairly, fully and clearly made out, acknowledged and recorded in the proper county, in the form and manner required by this article; noticing and particularly describing the donation of lands or otherwise to individual societies, bodies politic, or for common or public purposes; provided, that if the lots shall have been differently numbered and sales made and they cannot be well changed they shall be returned as originally stated; but in all other respects the plat or map shall conform to the requisitions of this chapter. [C. L. 1101.]

1596. Fees — surveyor and register. The surveyor who shall lay out, survey and plat any town or addition shall be entitled to receive twenty-five cents for each and every in and out-lot the same may contain, unless otherwise agreed, and the register of deeds of the county recording the same shall receive the sum of two cents for each and every lot as aforesaid; the said plat and survey to be by him transcribed or copied into a book to be provided for that purpose. [C. L. 1102.]

1597. Penalty for failure to comply. If any person or persons shall dispose of, offer for sale or lease for any time any out or in-lots in any town or city or in any addition to any town or city or any part thereof, which shall hereafter be laid out, until all the foregoing requisitions of

this article shall have been complied with, every person so offending shall forfeit and pay the sum of ten dollars for each and every lot or part of a lot sold or disposed of, leased or offered for sale. [C. L. 1103.]

1598. Penalty for neglect of duty. If any officer or other person or persons whose duty it is to comply with any of the requisitions of this article shall neglect or refuse so to do, he or they shall forfeit and pay a sum of not less than ten nor more than one hundred dollars for each and every month he or they shall delay a compliance. [C. L. 1104.]

1599. Forfeitures and liabilities. All forfeitures and liabilities which may be incurred or arise under this article shall be prosecuted for and recovered in the name of the county treasurer, and any officer or officers paying over any money to the said treasurer, received under any of the provisions of this article, shall take his receipt therefor and forthwith file the said receipt with the clerk of the board of county commissioners, and the said clerk shall charge the amount of said receipt against said treasurer on the books of the county commissioners. [C. L. 1105.]

VACATION OF TOWN PLATS BY CIRCUIT COURT.

1600. Power of circuit court. The circuit courts are hereby authorized and empowered on application made by the proprietors of any town within their proper county to alter or vacate the same or any part thereof. [C. L. 1106.]

1601. Notice, how given. If any proprietor or proprietors of a town shall be desirous of altering or vacating the same or any part thereof, such proprietor or proprietors shall give notice in writing of such intended application in at least two of the most public places in the county wherein such town may be situated, and insert a copy thereof in a newspaper printed or in circulation in said county if there be one, at least forty days prior to the sitting of the court to which he or they intend to make such application. [C. L. 1107.]

1602. Proceedings. If such applicant or applicants shall produce to said court satisfactory evidence that the notice required by the preceding section has been given, the court shall proceed to hear and determine said petition, and may alter or vacate said town or any part thereof, and order their proceedings thereon to be recorded by the clerk with the records of said court. [C. L. 1108.]

VACATION OF TOWN AND CITY PLATS.

1603. Procedure. Any plat of any town or city or addition thereto or any subdivision of land may be vacated by the proprietors thereof at any

time before the sale of any lots therein by a written instrument declaring the same to be vacated, duly executed, acknowledged or proved and recorded in the same office with the plat to be vacated; and the executing and recording of such writing shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys, commons and public grounds laid out as described in such plat. And in cases where any lots have been sold the plat may be vacated as herein provided by all the owners of lots in such plat joining in the execution of the writing aforesaid; provided, that this act shall not be construed as applying to any of the territory included within the limits of any incorporated city, town or village created and organized under and by virtue of a special act of the legislature. [C. L. 1109.]

1604. Part of plat vacated — procedure. Any part of a plat may be vacated under the provisions and subject to the conditions of this chapter; provided, such vacating does not abridge or destroy any of the rights and privileges of other proprietors in said plat; and, provided, further, that nothing contained in this section shall authorize the closing or obstructing of any public highways laid out according to law. [C. L. 1110.]

1605. Proprietor's rights vacated. When any part of a plat shall be vacated as aforesaid the proprietors of the lots so vacated may inclose the streets, alleys and public grounds adjoining said lots in equal proportion. [C. L. 1111.]

1606. Duty of register. The register of deeds in whose office the plats aforesaid are recorded shall write in plain, legible letters across that part of said plat so vacated the word "vacated," and also make a reference on the same, to the volume and page in which the said instrument of vacation is recorded. [C. L. 1112.]

1607. Owner may plat again. The owner of any lots in a plat so vacated may cause the same and a proportionate part of adjacent streets and public grounds to be platted and numbered by the county surveyor, and when such plat is acknowledged by such owner and is recorded in the record office of the county such lots may be conveyed and assessed by the numbers given them on such plat. [C. L. 1113.]

ARTICLE 4. CHANGING LIMITS OF CITIES AND TOWNS.

1308. Limits may be extended. On petition in writing signed by not less than three-fourths of the legal voters and by the owners of not less than three-fourths (in value) of the property in any territory contiguous to any incorporated city or town and not embraced within the

limits thereof, the city council of the city or the board of trustees of the town, as the case may be, may by ordinance annex such territory to such city or town upon filing a copy of such ordinance with an accurate map of the territory annexed (duly certified by the mayor of the city or the president of the board of trustees of the town) in the office of the register of deeds of the county where the annexed territory or the greater portion of it is situated, and having the same recorded therein. [C. L. 1114.]

1609. Limits restricted. On petition in writing signed by not less than three-fourths of the legal voters and by the owners of not less than three-fourths (in value) of the property in any territory within any incorporated city or town, and being upon the border and within the limits thereof, the city council of the city or the board of trustees of the town, as the case may be, may disconnect and exclude such territory from such city or town; provided, that the provisions of this section shall only apply to lands not laid out into city or town lots or blocks. [C. L. 1115.]

1610. Notice of presentation of petition. No final action shall be taken by the city council or the board of trustees, as the case may be, upon any petition presented in pursuance of the provisions of sections eleven hundred and fourteen and eleven hundred and fifteen, until notice of the presentation of such petition has been given by the petitioners by publication at least once in each week for two successive weeks in some newspaper published in the city or town where the petition has been presented; or if no newspaper be published in such city or town, then in the newspaper published nearest to such city or town. [C. L. 1116.]

1611. Petition, when presented. Upon the failure of the city council or the board of trustees, as the case may be, to grant the request contained in a petition presented in accordance with the provisions of sections eleven hundred and fourteen and eleven hundred and fifteen, for thirty days after the last publication of the notice provided for in section eleven hundred and sixteen, or upon a refusal to grant such request, the petitioners may present their petition to the circuit court of the county in which such city or town or the greater portion of it is situated, by filing such petition with the clerk of said court. Notice of such filing shall be served by the petitioners upon the mayor of the city or the president of the board of trustees of the town, as the case may be, together with a notice of the time and place when and where a hearing shall be had upon such petition, at least ten days before the date of such hearing. The hearing on the petition may be had at a regular or special term of the district court or by the court in vacation. [C. L. 1117.]

1612. Duty of court. If upon the hearing the court shall find that the request of the petitioners ought to be granted and can be so granted without injustice to the inhabitants or persons interested the court shall so order. If the court shall find against the petitioners the petition shall be dismissed at the cost of the petitioners. [C. L. 1118.]

1613. Map to be filed. When any territory is annexed by ordinance or by a decree or order of court to any city or town as provided in this act, it shall be the duty of the mayor of the city or of the president of the board of trustees of the town, as the case may be, to cause an accurate map of such added territory, together with a copy of the ordinance for the annexation or a copy of the decree or order of court therefor, duly certified, to be filed and recorded in the office of the register of deeds of the county in which such added territory or the greater portion of it is situated. If territory is disconnected or excluded from any city or town a copy of the ordinance or decree therefor shall be so filed and recorded, at the expense of the petitioners therefor. [C. L. 1119.]

ARTICLE 5. CHANGING NAMES OF TOWNS OR VILLAGES.

1614. Petition. When any number of the inhabitants of any town or village shall desire to change the name thereof, there shall be filed in the office of the county clerk or county auditor a petition for that purpose, which must be signed by at least two-thirds of the qualified electors of said town or village, setting forth the name by which said town or village is known, its location as near as practicable, and giving the name which they desire the town shall thereafter be known by. [C. L. 1120.]

1615. Notice. Notice of the filing of said petition and the time and place when the same shall be heard and the objects and purposes thereof shall be given by posting up a written or printed notice in at least five public places in the town or village the name of which is sought to be changed, at least four weeks before the meeting of the board of county commissioners. [C. L. 1121.]

1616. Duty of county commissioners. At the next regular meeting of the board of county commissioners after said notices shall have been posted as aforesaid, said board shall proceed to hear and determine said petition unless said hearing is for good cause continued until the next meeting; and said board shall on the hearing of said petition also hear any remonstrance against the proposed change; and if on the hearing it shall appear to the said board that two-thirds of the qualified electors of said town or village in good faith signed said petition for change of name and desired the same, then the said board shall order said name to be changed as prayed for. [C. L. 1122.]

1617. Record. Said order of the board shall thereupon be entered of record, giving the name of said town or village as set forth in said petition, the new name given, the time when the change shall take effect, which shall not be less than thirty days thereafter, and directing that notice of said change shall be published in at least one newspaper published in said county, if any, and if there is no newspaper published in said county, then said notice shall be published by posting the same for four weeks on the front door of the court house where the last term of the district court of the said county was held. [C. L. 1123.]

1618. Filing proof. The ordinary proof of such publications shall be filed in the office of the county clerk or county auditor and shall be by him filed for preservation; and on the day fixed by the board as aforesaid the change shall be complete; provided, that whenever the name of any town or village shall be changed by order of the provisions of this act the county clerk or county auditor shall immediately notify the register of deeds, who shall note the change of name upon the plat of said town or village with the date thereof. [C. L. 1124.]

1619. Costs. In all cases arising under the provisions of this act, where there is no remonstrance or opposition to said petition, the petitioners shall pay all costs; but in all other cases costs shall abide the result of the proceeding and be taxed to either party in the discretion of the board, or divided equitably between the parties. [C. L. 1125.]

ARTICLE 6. CHANGING WARDS.

1620. Who may petition. When a petition shall be presented to the mayor and council of any town or city incorporated under any special or general act of the state legislature, signed by a majority of the legal voters of said town or city, the majority to be determined by the number of names on the poll list of the last regular election, praying for a change in the name, number or boundary of wards of said town or city, the council of such corporation shall at once cause to be published in a weekly newspaper of the town or city in at least three issues a notice of the day and hour together with the place of meeting at which they will consider such petition. [C. L. 1126.]

1621. Council may order change. If it shall appear to the council that the change petitioned for is desirable and for the best interests of the town or city, the council may by a majority vote of all the members elect order the change desired, but no such change shall take effect until the next regular election. [C. L. 1127.]

1622. Plats and records — changes. The council shall order the corporation attorney to cause such needful changes in papers, plats and matters of record as the change made may demand [C. L. 1128.]

1623. Duty of clerk. It shall be the duty of the town or city clerk to make such changes in assessment lists as the change in wards necessitates. [C. L. 1129.]

1624. Election in new ward. Ten days before the next regular election the council shall designate the proper polling place or places for the new ward or wards, appoint judges, clerks, and make all necessary provisions for holding the election in the new ward or wards, naming the several officers to be chosen. [C. L. 1130.]

ARTICLE 7. LOCATING AND VACATING STREETS AND ALLEYS.

1625. Powers. Any city, town or village organized under and by virtue of a special act or charter or under and by virtue of any general law of the state of South Dakota is hereby authorized and empowered by and through its proper municipal officers to lay out, open, grade and otherwise improve the streets, alleys, sewers, sidewalks and crossings therein and to keep them in repair and to vacate the same. [C. L. 1131.]

1626. Petition. Whenever a majority of the resident owners of real estate situated in any block or subdivision of any city or incorporated town or village in the state of South Dakota shall be desirous of locating an alleyway through such block or subdivision when said block or subdivision contains no alleyway, they shall after having given notice of their intention so to do by publishing notice thereof in a newspaper printed and published in the city or incorporated town or village wherein said block or subdivision is situated for three consecutive weeks once in each week prior thereto, present their application in writing to the judge of the district court of the county wherein said city or incorporated town or village is located, describing the proposed location of the proposed alleyway. [C. L. 1132.]

1627. Commissioners appointed. Upon the presentation to him of the said application, together with due proof of publication of the notice required in the preceding section, the judge shall appoint three commissioners to appraise the damages, if any, to the property in the block or subdivision wherein said alleyway is sought to be located. Said commissioners in their appraisal may and shall take into consideration and offset any advantage to abutting property against the damages thereto. [C. L. 1133.]

1628. Duty of commissioners — damages and costs. Said commissioners shall thereupon locate said alleyway and make their return forthwith to said court, which return shall contain a plat of the block or subdivision showing the location of the proposed alleyway, a statement

of the damages to each lot or parcel of land in said block or subdivision, together with the aggregate amount of the damages, and if the said location be granted by the court said damages and all costs of the proceeding shall be entered up against said block or subdivision and be a first lien thereon against each lot or parcel in proportion to the assessed valuation thereof by the last assessment next preceding the date of the granting of said order, and shall be by the clerk of said court certified to the county clerk of the county in which said city or incorporated town or village is situated, who shall in making out the duplicate assessment and tax of said county next thereafter enter said sums therein in a separate column opposite the description of the property against which the taxes so remain unpaid, and such taxes shall be collected in the same manner and by the same person as the general taxes of said county are collected, and shall when so collected be paid over to the person entitled thereto. [C. L. 1134.]

ARTICLE 8. WATER WORKS AND FIRE APPARATUS.

1629. Water works and fire alarm. [Ch. 40, '90.] All towns, cities and municipal corporations in this state having a population of five hundred inhabitants or more are hereby authorized and empowered to purchase, erect, lease, rent, manage and maintain any system or part of system of water works, hydrants and supply of water, telegraphing fire signals or fire apparatus that may be of use in the prevention and extinguishment of fires; and to pass all ordinances penal or otherwise that shall be necessary for the full protection, maintenance, management and control of the property so leased, purchased or erected. The common council or board of trustees of such city or municipal corporation are hereby empowered and authorized to assess, levy and collect taxes for the purposes aforesaid, and to do all acts necessary to carry such lease and contracts of purchase, erection or maintenance into effect, and to pay the stipulated rent or contract prices for the property so leased, purchased, erected or to be maintained, excepting however that any such lease or contracts for purchase, erection or maintenance which shall stipulate for an annual payment greater than an annual levy of five mills on each dollar of the assessed valuation of such city or municipal corporation shall not be authorized until the contract providing therefor shall first have been submitted to a vote of the people of such city or municipal corporation at any general or special election and ratified by a majority of the voters of said city or municipal corporation voting at such election. [C. L. 1135.]

1630. Act construed. This act shall not be construed to modify or affect the power of any city or town or the powers of the common

council or board of trustees thereof as authorized and granted by the charters of such cities or towns or the laws under which they were incorporated, where said charter or law shall have expressly given to such city the power to lease, rent or maintain the property described in this act. [C. L. 1136.]

ARTICLE 9. INSURANCE TAX FOR FIRE DEPARTMENTS.

1631. Duty of clerk. The clerk of every city, town or village in the state of South Dakota having an organized fire department shall on or before the thirty-first day of October in each year make and file with the auditor of this state his certificate stating the existence of such department, the date of its organization, the number of steam, hand or other engines, hook and ladder trucks and hose carts in actual use, the number of organized companies, the number of members of each company, and the system of water supply in use in such department, together with such other facts as the auditor may require. [C. L. 1137.]

1632. Blanks — insurance company statements. The blanks required by law to be furnished by the state auditor to insurance companies shall contain the names of the cities, towns and villages entitled to benefits under this act, and every insurance company doing business in this state shall include in its annual statement the amount of all premiums received by them upon policies issued on property within the corporate limits of such city, town or village during the year ending on the preceding thirty-first day of December. [C. L. 1138.]

1633. Duty of state auditor. The said auditor on the first day of July thereafter shall issue and deliver to the treasurer in each city, town or village having an organized fire department entitled to the benefits under this act his warrant upon the state treasurer for an amount equal to two per centum of the premiums received upon policies issued on property in any such city, town or village, which warrants shall be numbered consecutively and shall each specify the date of its issuance and to whom payable, and such warrants shall be paid by the state treasurer to the treasurer of any such city, town or village upon presentation thereof, and when so received by said treasurer the same shall be paid over to said company or companies, in equal proportion, having a membership of at least fifteen members for a period of eight months prior to the date of the certificate of the clerk as provided in section eleven hundred and thirty-seven, and having the management of at least one steam, hand or other fire engine, hook and ladder truck or hose cart, upon the written order of such company or companies approved by the city council, trustees or other governing body of such city, town or village. [C. L. 1139.]

1634. Qualifications of fire department. No city, town, or village shall be entitled to any of the benefits arising from this act unless the fire department shall have been in actual existence eight months prior to the filing of the certificate required by section eleven hundred and thirty-seven, and unless such fire department shall have had for such period as a part of its equipment, at least one steam, hand or other fire engine or hook and ladder truck or hose cart, with a membership of at least fifteen persons for said period of eight months. [C. L. 1140.]

1635. Certificate of organization filed. If the certificate required by section eleven hundred and thirty-seven is not filed with the auditor on or before the thirty-first day of October in each year, the city, town, or village so failing to file such certificate shall be deemed to have waived and relinquished its right for such year to the appropriation herein provided for. [C. L. 1141.]

Chapter 53, Laws of 1887, creates a liability upon the state and constitutes a valid appropriation, and continued as such until repealed by subsequent provisions of law. Constitution is not retroactive and cannot affect existing rights. *Cutting v. Taylor*, 3 S. D. 11; 51 N. W. Rep. 949; *State ex rel. Farrar v. Hipple*, State Auditor, 7 S. D. 234; 64 N. W. Rep. 120.

ARTICLE 10. FREE LIBRARIES.

1636. Library fund. The common council of every city not exceeding in population fifty thousand inhabitants, and each village or township board of every village and township containing over five hundred inhabitants, shall have power to establish and maintain a public library and reading room, and for such purpose may annually levy and cause to be collected as other taxes are collected a tax not exceeding one mill on each dollar of the taxable property of such city, village or township, to constitute the library fund, which fund shall be kept separate and apart from the other money of the city, village or township by the treasurer thereof, and the same shall be used exclusively for such purpose; provided, that no library shall be so established without first submitting it to a vote, and be approved by a majority of the electors of such city, village or township, who shall vote on such question at any annual or general election at which it may be submitted to vote. [C. L. 1142.]

1637. Board of directors appointed. For the government of such library and reading room there shall be a board of five directors appointed from the citizens of such city, village or township, including both males and females, who shall be appointed by the board of education or school board of such city or village, or where there is no incorporated city or village then by the board of supervisors of such township; and there shall be one member of such board of education or

school board or board of supervisors appointed as one of the directors of such library and reading room. Such directors shall hold their office for two years from the first day of July in the year of their appointment and until their successors are appointed, but upon their first appointment they shall divide themselves at their first meeting by lot into two classes, two of said board to hold for one year and the remaining three for two years, and their terms shall expire accordingly; and thereafter there shall be appointed in each year the requisite number to fill the vacancies caused by the expiration of the terms of those going out of office in such year. All vacancies shall be immediately reported to and filled by such board of education, school board or board of supervisors, and if for an unexpired term, for the residue of the term only. No compensation whatever shall be paid or allowed any director in such official capacity. [C. L. 1143.]

1638. Duties and powers. Said directors shall immediately after their appointment, meet and organize by electing from their number a president, secretary and librarian. They shall make and adopt such by-laws, rules and regulations relating to the duties of officers and for the management of the library and reading room as may be expedient, not inconsistent with this act. They shall have the exclusive control of the expenditures of all moneys collected or contributed for the library fund, and the supervision, care and custody of the library property, rooms or buildings constructed, leased or set apart for that purpose; and such money shall be drawn from the treasury by the proper officers upon the proper authenticated voucher of the board of directors without being otherwise audited. They may with the approval of the board of education or school board or board of township supervisors aforesaid, without which no lease, purchase or contract therefor shall be valid, build, lease or purchase an appropriate building and purchase a site therefor, not however employing in such purchase or building more than half the income in any one year. [C. L. 1144.]

1639. Library free — rules. Every library and reading room established under this article shall be forever free for the use of the inhabitants of the city, village or township where located, always subject to such reasonable rules and regulations as the board of directors may deem necessary to adopt and publish to render the use of said library and reading room of the greatest benefit, and they may exclude from the use of said library and reading room any and all persons who shall wilfully violate such rules. [C. L. 1145.]

1640. Annual report. The board of directors shall make an annual report to the said board of education or school board or board of super-

visors stating the condition of their trust, the various sums of money received from all sources, and how much money has been expended and for what purpose, the number of books and periodicals on hand, the number added by purchase or gift during the year, the number lost and loaned out, the character and kind of books contained in library, with such other statistics, information and suggestions as they may deem of general interest. [C. L. 1146.]

1641. Donations. All persons desirous of making donations of money, books, personal property or real estate for the benefit of such library shall have the right to vest the same in the board of directors, to be held and controlled by such board when accepted for the use of such library and reading room, and as to such property said board shall be held and considered to be special trustees. [C. L. 1147.]

1642. City council — appropriate funds, when. To aid and facilitate the organization of a library in any city, village or township as in this act provided, where the same is required by the people thereof, and where in any city the sum of four hundred dollars or more shall have been donated and deposited with the city treasurer for that purpose, and to any village or township where the sum of one hundred and fifty dollars or more shall have been donated and deposited with the village or township treasurer for the benefit of such library, and also where such amount shall prior to the passage of this act have been donated and expended for the purchase of a library existing in any such city, village or township, the city council of such city is hereby authorized and it shall be its duty to appropriate two hundred dollars from the general fund of such city for such library, for which amount a warrant shall be drawn on the city treasurer; and the board of trustees of such village or the board of supervisors of such township are hereby authorized and it shall be their duty to appropriate one hundred dollars from the general fund of such village or township for such library, for which amount a warrant shall be drawn on such village or township treasurer; provided, that in the case of any library association now established it shall first agree to turn over to the library and reading room thus established all books, periodicals and other property. The treasurer of such city, village or township shall accept such warrant and apply the proceeds from the sale of the same to the library fund, which together with the amount donated shall be held subject to the order of the board of directors for such library; and the payment of such warrants shall be provided for in the next assessment of taxes in such city, village or township, and such library may be organized without submitting the same to a vote as provided in section eleven hundred and forty-two. [C. L. 1148.]

ARTICLE 11. BONDS OF MUNICIPAL CORPORATIONS.

1643. For what purpose issued. [Ch. 59, '90.] Any city or municipal corporation in this state, organized under and by virtue of a special charter or under and by virtue of the general law of this state, may incur a bonded indebtedness for the purpose of erecting public school buildings and other buildings for city purposes, purchasing fire apparatus, putting in water works, sinking public wells or cisterns, and putting in sewers and improving streets, which said indebtedness, together with the indebtedness which then exists, shall not exceed five per centum of the assessed valuation of said city or municipal corporation as shown by the returns of the assessor for the year next preceding the time at which said indebtedness shall be incurred. [C. L. 1149.]

1644. Election. The bonds issued for the purposes mentioned in section eleven hundred and forty-nine shall be issued by the common council or board of trustees of any city or municipal corporation only upon a majority vote of the qualified electors of such city or municipal corporation at an election regularly called for that purpose and in accordance with the provisions of the charter of such city or municipal corporation governing the issuance and sale of bonds; provided, that in all cities and municipal corporations where the charter does not provide the manner of calling and holding an election for the purpose aforesaid, a special election shall be called and held as herein provided, or said question may be submitted to any annual election. The city council or board of trustees at any regular meeting thereof may decide to call a special election to vote bonds for any of the purposes stated in section eleven hundred and forty-nine, and they shall give at least fifteen days' public notice of such election by at least two publications thereof in a weekly newspaper published in said city, or if there be no such newspaper then by posting said notice in five public places in said city. Said notice shall state the amount and denomination of the bonds to be voted for, the rate of interest thereof, the purpose for which said bonds are to be issued, the form of the ballots to be used, and the time and place of holding said election. The judges and clerks shall be appointed and said election shall be conducted as provided by the charter of said city for conducting annual elections, and the returns shall be canvassed and in like manner returned; and, provided, that this act shall not be construed to limit or restrict the powers already conferred by any special charter upon the council of any city or municipal corporation. The bonds voted as provided for in this act shall be sold at not less than par value. [C. L. 1150.]

1645. Powers of city council—limitation—rate of interest. [Ch. 140, '95.] § 1. The city council of every city in this state, whether incorporated under a general or special act of the legislature, shall have the power to fund any or all floating indebtedness of the city created prior to the date of admission of this state into the Union, and for that purpose shall have power to issue bonds, to run not to exceed twenty years, redeemable at the option of the city after five years, and to bear interest not to exceed six (6) per centum per annum, but said bonds shall not be sold by the city at less than par or face value.

1646. Question to be voted upon—council to levy tax for payment of bonds. [Ch. 140, '95.] § 2. The city council shall at or before issuing any such bonds or incurring any indebtedness thereby, provide by ordinance for the collection of an annual tax sufficient for their payment in the manner provided by the constitution; provided, no bonds shall be issued by said city council under the provisions of this act unless at an election after twenty days' notice in a newspaper published in said city, stating the purpose for which said bonds are to be issued and the amount thereof, the legal voters of said city shall by a majority of the votes cast determine in favor of issuing said bonds. The votes cast at such election shall be canvassed and returned to the city council in the same manner as provided for in city elections; and provided, further, that no city council or officer or officers, of any such city, nor any other person shall have authority to bind or preclude any city as against any holders of such bond by any assertion, recital or certificate contained in or indorsed upon any such bonds.

CITY FUNDING BONDS.

1646a. Issue authorized. [Ch. 51, '99.] § 1. Each incorporated city organized under and by virtue of a special charter or under and by virtue of the general law of this state, is hereby authorized and empowered by and through its city council, when deemed in the judgment of such council to be to the best interests of the city to issue its negotiable bonds in the name of the city for the sole purpose of refunding the bonded indebtedness of such city, which is at the time due and payable, or is about to become due and payable, or whenever such indebtedness can be refunded at a lower rate of interest than the then existing rate of interest on the said indebtedness.

1646b. Denomination. [Ch. 51, '99.] § 2. Each bond issued under the provisions of this act shall recite upon its face the purpose for which it is issued. Such bonds shall be in denominations of not less than one hundred dollars nor more than one thousand dollars, and shall be numbered from one up consecutively, shall bear date and shall show the date when payable, and may be made payable in not less than five years or more than twenty years from their date; shall be made payable to the purchaser or bearer and may be payable anywhere in

the United States; shall bear interest at a rate not exceeding five per centum per annum, payable annually or semi-annually as may be agreed upon, and shall have interest coupons attached. Such bonds and coupons shall be signed by the mayor and attested by the city clerk or auditor of the city in whose name they are issued and the seal of such city shall be affixed to each bond. The fac simile signature of such officers to the coupons may be lithographed or engraved. A copy of this act shall be printed or engraved on the back of each bond.

1646c. Selling price — proceeds. [Ch. 51, '99.] § 3. Such bonds may be issued and sold by the city council by resolution upon a majority vote of all members elect of the city council, but shall not be sold at a price less than the par value thereof and the accrued interest thereon, and the proceeds of sale of such shall be applied solely to the payment of the bonded indebtedness of such city ordered refunded, or such bonds may be exchanged at not less than par value for not less than an equal amount at par value of such original bonds of such city. And no bond issued under the provisions of this act shall be delivered to the purchaser until a like amount of the refunded bonds are surrendered and cancelled.

1646d. Duty of auditor and treasurer. [Ch. 51, '99.] § 4. Bonds issued as herein provided shall, before delivery thereof to the purchaser, be presented by the city clerk or auditor to the city treasurer, who shall register them in a book to be kept for that purpose, and known as the bond register, wherein he shall enter the number of each bond, its date, the date of its maturity, its amount, rate of interest, and to whom and where payable, and shall copy one of said bonds in full, together with one coupon, in said bond register.

1646e. Levy. [Ch. 51, '99.] § 5. At or before the time such bonds are issued the city council shall levy upon the taxable property of the city for each year during the life of the bonds, a sufficient tax to pay the principal and interest of such bonds at maturity, and such tax levy may be made in the resolution authorizing the issuance of the bonds.

1646f. Treasurer to pay. [Ch. 51, '99.] § 6. On presentation of such bonds and the several coupons thereto attached at their maturity respectively, it shall be the duty of the city council to pass a resolution authorizing the city treasurer to pay the same, and the city treasurer shall cancel the same by writing or stamping across the face of each bond or coupon so paid, "Cancelled by payment this day of" (inserting the date of such payment).

IRRIGATION BONDS.

1646g. Power to bond. [Ch. 52, '99.] § 1. That any county, municipal corporation, civil township or district, except cities of the first class, may incur indebtedness additional to all other debts heretofore

authorized by law, and issue its bonds therefor for the purpose of providing water for irrigation and domestic uses, as hereinafter provided.

1646h. Limit of issue. [Ch. 52, '99.] § 2. No such county, municipal corporation, civil township or district shall incur such indebtedness as is provided for in this act, nor issue its bonds therefor in excess of ten per cent of the assessed valuation of the taxable property therein, according to the last assessment thereof.

1646i. May order election. [Ch. 52, '99.] § 3. Whenever, in the judgment of a majority of any board of county commissioners, city council or any lawfully constituted authority of any county, municipality, civil township or district whose power and duty it is to call elections for other purposes, may deem it necessary to provide water for irrigation or the domestic uses of such organization, such board may order an election for the purpose of determining by a vote of the electors of such county, municipal corporation, civil township or district, or may submit at any general election the question of incurring an indebtedness and issuing its bonds for the purpose of procuring water for irrigation and domestic uses, as by this act provided. Such election shall be held in the manner and upon the notice prescribed by law for other elections, and the notice of such election as published shall state the maximum amount of indebtedness to be incurred and bonds to be issued; the purpose for which they are to be used, and the maximum rate of interest they shall bear, and the ballots shall have printed thereon substantially the same proposition as is included in the notice of election as aforesaid, and at the foot thereof shall be printed the words, " Shall the above proposition prevail, and the indebtedness above stated be incurred, and the bonds proposed be issued?" with the words " Yes " and " No " printed immediately at the left thereof, each preceded by a square wherein the voter can place a cross opposite the word " Yes " for voting in favor of the proposition, or a cross in front of the word " No " for voting against the same, and if a majority of the electors of such county, municipal corporation, civil township or district shall be in favor of incurring such indebtedness and issuing the bonds therefor, then the lawful authorities calling such election shall issue and dispose of said bonds as authorized by such election, and erect suitable structure and do such acts as are necessary to secure and supply water for irrigation or domestic uses as the case may be.

WATER WORKS BONDS.

1646k. Authority. [Ch. 53, '99.] § 1. That there is hereby granted to cities of the first class the right and power to issue bonds for the purpose of constructing, equipping, maintaining and operating or purchasing a system of water works for the purpose of providing water for domestic uses: Provided, That no such city shall be authorized to issue bonds or to incur any indebtedness or liability of any kind for any

such purpose in excess of ten per centum upon the assessed value of the taxable property of such city, according to the last preceding assessment before the issuance of such bonds.

1646l. Special election. [Ch. 53, '99.] § 2. The city council of any such city may, by resolution, passed by a majority of the aldermen elect at any regular meeting of such city council, or special meeting called for that purpose, call a special election and submit the question of the issuance of such bonds to the electors thereof. Such resolution shall set forth: The amount of bonds to be issued, the maximum rate of interest they shall bear, the length of time they shall run, and the purpose for which they are to be issued. Such election shall be advertised as now provided by law for the calling of special elections in such cities. The ballots to be voted at all elections under this act shall read as follows: "In favor of the proposition of issuing bonds to the extent of dollars, for the purpose of providing water for domestic uses." "Against the proposition of issuing bonds to the extent of dollars, for the purpose of providing water for domestic uses." Such elections shall be conducted and the votes cast thereat shall be counted, returned and canvassed in such manner as is now provided by law for elections in such cities; Provided, That a majority of the electors of such city shall be determined by the vote cast for mayor of the city at the last preceding election for such officer. If a majority of the electors of such city shall cast their vote in favor of the issuance of such bonds, the city shall, through its proper officers, without further act be authorized to issue such bonds to the amount voted, and to sell and negotiate the same.

1646m. How issued and sold. [Ch. 53, '99.] § 3. All bonds authorized by this act shall run not more than twenty years from the date of their issuance and shall bear interest at not to exceed five per cent per annum, payable annually or semi-annually as the city council may provide, and principal and interest shall be payable at such place as may be fixed by the city council; such bonds shall be signed by the mayor and attested by the city auditor and sealed with the seal of such city, and shall be sold at not less than the par value and accrued interest to the highest bidder after notice of such sale has been published once in each week for three successive weeks in a daily newspaper, if there be one published in such city, and if not, then in a weekly newspaper published in the city where such bonds shall be issued, and in such other newspapers and places as the council may deem advisable.

ARTICLE 12. REFUNDING BONDED SCHOOL INDEBTEDNESS.

1647. May be refunded. All bonds heretofore issued by any city or by or under the authority of the board of education of any city in this state for school or school house purposes may be refunded in the dis-

cretion of said board in the manner hereinafter provided, whenever there is not sufficient money in the treasury of such city to pay such bonds and legally applicable thereto. [C. L. 1151.]

1648. Denominations. Said bonds shall be in denominations of not less than one hundred nor more than one thousand dollars, shall be numbered from one upward consecutively, shall bear the date of their issue, shall be made payable to the purchaser or bearer, shall be payable ten years from date, and shall bear interest at a rate not exceeding seven per centum per annum payable annually, with interest coupons attached, and principal and interest shall be made payable at such place as may be designated by the board of education. The bonds and each coupon shall be signed by the mayor and attested by the city clerk under the seal of the city. Said bonds shall be printed, engraved or lithographed on good bond paper, and a duly authenticated copy of this act shall be printed on the back of each bond. [C. L. 1152.]

1649. Board of education levy tax. The board of education shall levy each year upon the taxable property of such city a tax sufficient to pay the interest on said bonds as the same accrues, and after five years from the date of said bonds an annual sinking fund tax sufficient for the payment of said bonds at maturity, which taxes shall become due and be collected the same as other city taxes. [C. L. 1153.]

1650. How executed. The refunding of indebtedness and the issuance of bonds provided in this act shall be under the control and direction of the board of education, and a resolution of said board directing the execution of such bonds and specifying the number and amount of each bond shall authorize and require the mayor and city clerk to execute the same in the manner herein provided, and deliver the bonds so executed to the board of education, who shall provide for the sale and negotiation thereof or for the exchange of said bonds for outstanding bonds authorized to be refunded under this act, as they may deem best; provided, that such refunding bonds shall not be sold or exchanged at less than par value. Both principal and interest of said bonds shall be paid by the city treasurer by warrants drawn upon the funds created therefor and issued under the direction of the board of education. A duly certified copy of the resolution of the board of education authorizing and directing the execution of such bonds by the mayor and city clerk shall be printed on the back of each bond. A register of all bonds so executed shall be made by the city clerk and kept in his office as a public record, showing the number, date, amount, interest, name of payee and when and where payable, of each and all bonds executed under the provisions of this act. And after such outstanding bonds shall have been so refunded the same shall be placed in the hands of the city clerk after having been first marked across the face thereof in red ink the words "refunded bond;" and the city clerk shall thereupon make a record of each bond in the same manner provided herein for bonds issued under this act, and at the next regular

meeting of the city council shall cancel and burn said bonds in the presence of the city council and make a record of such action in the proceedings of the council. [C. L. 1154.]

ARTICLE 13. TAKES IN CERTAIN CORPORATIONS.

1651. Coupons issued to extend bonds. [Ch. 54, '99.] § 1. When any school district in this state, which shall have heretofore legally issued, executed and delivered its negotiable bonds for the purposes then provided by law, and which at the time of issue thereof was not in excess of the debt limit allowed said district or township by law, but which said district for any reason has outstanding in said bonds and other indebtedness an amount in excess of the present constitutional and statutory limit, so as to preclude a valid issue of bonds funding all outstanding indebtedness, then, and in that event, the school board of said district, upon being authorized so to do by a majority vote of all electors at any regular election or special election called for that purpose, is hereby empowered to make a contract for the issue of extension coupons with the holder or holders of said outstanding bonds, at or prior to the time of the same becoming due, which said contract shall be entered upon the clerk's record of said district, and in pursuance of said contract the said board shall execute and deliver the extension coupons of said district extending the time of payment of said school bonds heretofore issued for a period not less than three nor more than ten years, at a rate of interest to be agreed upon between said school district board and the holder or holders of said bonds, not to exceed the rate in the original bonds, payable semi-annually at such date and place as may be stated in said coupons.

1652. Sinking fund. See § 2299a.

1653. For school purposes. See § 2299a.

1654. Municipal purposes. See § 2299a.

1655. Special assessment for sidewalk. To levy and collect special assessments for sidewalks and street improvements as hereinafter provided, and the money so collected shall be kept in a fund called the special assessment fund. [C. L. 1159.]

1656. Limitations on debts — exception — penalty. It shall be unlawful for the officers of such municipality to incur any greater indebtedness in any one year than three thousand dollars in excess of the taxes levied for that year, unless authorized and directed so to do by a vote of the electors of such municipality at an election held for that purpose. Any officer or officers contracting the same shall be guilty of a misdemeanor, and if any officer of said municipality shall issue any evidence of such indebtedness he shall be guilty of a misdemeanor. [C. L. 1160.]

[Art. 14, repealed. See Assessment and Taxation.]

ARTICLE 15. ROAD TAXES IN CITIES OR TOWNS.

1657. Duty of county treasurer as to certain funds. All road taxes collected as personal taxes from residents of any incorporated city or town, and all road taxes collected on account of real or personal property situated within any incorporated city or town, by the treasurer of the county in which such city or town is located, shall be turned over quarterly by such treasurer to the treasurer of such incorporated city or town, to be expended under the direction of the city council of such city or of the board of trustees of such town, as the case may be, in the improvements of the streets or bridges of such city or town or of the roads approaching thereto. [C. L. 1167.]

1658. Road district, how constructed. [Ch. 178, '95.] § 1. That the territory embraced within the limits of any incorporated town in this state, shall constitute a road district, for the purpose of levying and collecting the highway labor and road tax within the same, which said road district shall be known as the "Independent road district of the town of," giving to each such district the name of such incorporated town.

1659. Powers, in whom vested. [Ch. 173, '95.] § 2. That all the rights, powers and duties now conferred and imposed by law on the supervisors of townships in counties under township organization regarding the levy and collection of highway labor and road tax, and the keeping and maintaining the roads and bridges in repair, concerning the territory mentioned in section one of this act, shall be vested in the board of trustees of such incorporated town, and such board of trustees shall have the right to levy and collect such highway labor and road tax against the persons and taxable property within such district in the manner now, or which may be hereafter provided by law for the levy and collection of such tax by the supervisors and overseers of highways of townships.

POLL TAX.

1659a. Levy. [Ch. 119, '99.] § 1. Any city or town in this state shall have power to provide that all able bodied male residents of the corporation between the ages of twenty-one and fifty years, between the first day of January and the first day of October of each year, either by themselves or satisfactory substitute, shall perform one day's labor of eight hours each upon the streets, alleys, highways or public grounds within such corporation at such times and places as the proper officers may direct, upon three days notice in writing given, or pay in lieu thereof in money a sum to be fixed by the city council or the board of town trustees as the case may be, not exceeding one and one-half dollars for such days labor. For each days failure to attend and perform the labor, or pay said sum of money, as required, at the time and place specified, unless excused in writing by the supervisor of highways, street commissioner or proper officer in charge of such streets, avenues, alleys, public grounds, and highways, the delinquent shall forfeit and

pay the sum of two dollars not exceeding four dollars in all. Any person excused shall be again notified to perform such labor or pay said sum of money in lieu thereof, at any time prior to September first of said year. All persons claiming to be exempt from labor under this section shall, within three days after receiving notice to perform such labor, furnish the mayor or other proper officer an affidavit showing the extent and nature of the disabilities entitling him to such exemption. If he fails to do so he shall be liable to perform such labor or pay the penalty provided herein.

1659b. Failure to pay. [Ch. 119, '99.] § 2. In case of failure to pay said sum of money in lieu of said labor, together with such forfeit, to the supervisor of highways, street commissioner, or other proper officer of said corporation authorized to receive the same within ten days from the expiration of the time fixed for the performance of such labor, said corporation may recover the same by action brought in the name of the city or town, before any justice of the peace in the county wherein such city or town is situated. No property or wages belonging to said person shall be exempt to the defendant on an execution issued for said judgment and costs. The tax and forfeit money so collected shall be expended upon the streets, avenues, highways, alleys or public grounds of said corporation. All such tax and forfeit money remaining unpaid on the first day of September in each year may be certified to the county auditor at any time before the following first day of November, and shall be entered by him upon the tax list of said county and treated and collected as ordinary taxes, and shall be a lien on all the property both real and personal of the delinquent.

1659c. Action to collect. [Ch. 119, '99.] § 3. The entry of such tax and penalty upon the tax list shall not prevent an action being brought therefor as hereinbefore authorized. Said action, however, must be commenced within one year from the first day of October following the giving of notice to perform the labor. In event of judgment being rendered therefor and paid in whole or in part after the same has been certified to the county auditor, the court receiving such payment shall execute duplicate receipts, exclusive of costs, if so requested, and upon filing such receipt or duplicate with the county auditor he shall make the proper entries on the tax lists, showing full payment of such tax and penalty, or part thereof as the case may be.

1659d. Firemen may be exempted. [Ch. 119, '99.] § 4. The city council of any city or the board of trustees of any town may by ordinance exempt the members of any volunteer fire department in such city or town from poll tax upon such terms and conditions as it may see fit.

ARTICLE 16. TOWN SITES LOCATED ON PUBLIC LAND.

1660. Town site — who to make entry. Whenever any portion of the public lands of the United States have been or shall be settled upon

and occupied as a town site, and therefore not subject to a private entry under the agricultural pre-emption laws, it shall be lawful and the duty, whenever requested by a majority of the occupants or owners of the lots within the limits of the town, for the corporate authorities of the town if incorporated, and if not incorporated then for the judge of the county court of the county in which such town may be situated, to enter at the proper land office the land so settled upon and occupied, and hold the same in trust for the several use and benefit of the occupants thereof and those holding by deed or otherwise, according to their respective interests. [C. L. 1168.]

1661. Entry fee, how provided. If at any time the petition is presented as provided for in the preceding section there is not in the treasury of the town moneys sufficient to pay for the land settled upon and occupied, the corporate authorities or the county judge, as the case may be, may raise by subscription or otherwise sufficient funds to pay for said land and costs of entering the same, and any and all sums so advanced for such purpose shall be repaid in the manner provided for in section eleven hundred and seventy-two. [C. L. 1169.]

1662. Disposition of town property. When the corporate authorities of any city or town, or the judge of the county court of any county in this state in which any city or town may be located, shall have entered at the proper land office the land or any part thereof so settled and occupied as the site of such city or town, pursuant to and by virtue of the act of congress of the United States, entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March second, eighteen hundred and sixty-seven, and acts amendatory thereto, it shall be the duty of such corporate authorities or judge of the county court, his or their successors, to dispose of the trust so created and conferred by said act of congress in the manner hereinafter specified. [C. L. 1170.]

1663. Persons making entry transfer to claimants. Any such corporate authorities or judge of the county court holding the title to any such lands in trust as declared in said act of congress shall, subject to the provisions of this act, by a good and sufficient deed of conveyance grant and convey the title to each and every block, lot, share or parcel of the same to the person, persons, associations or corporations who shall occupy or possess or be entitled to the right of possession or occupancy thereof, according to the several rights and interests of the respective claimants in or to the same as they existed in law or equity at the time of the entry of such lands, or to the heirs or assigns of such claimants. Every such deed of conveyance made by such corporate authorities or judge of the county court pursuant to the provisions of this act shall

be so executed and acknowledged as to admit the same to be recorded. [C. L. 1171.]

1664. Expenses. Immediately upon making the entry, and during the sixty days thereafter, such corporate authorities or county judge shall proceed to itemize and pass upon the expenses of procuring said entry to be made, including the moneys paid at the land office for such entry, the costs of surveying and platting the town site, of attorney's fees, witness fees, recording plat and all other expenses necessary and incident to procuring the entry and perfecting the title, and for this purpose shall give notice to all persons having any claims for moneys advanced or services rendered to present and file a certified statement of the same within said sixty days, such notice to be given promptly after making of the entry, and to be by publication for three weeks in some newspaper published in the county wherein the town site is located, or if none be so published then in the newspaper published nearest thereto. And any person having or making any such claim who shall at the expiration of said sixty days have failed to file such verified statement of account shall be thereafter barred from presenting the same or recovering thereon. Upon the receipt of such verified statements of accounts they shall be duly filed by the said corporate authorities or judge of the county court, and either allowed, rejected or allowed in part as in the judgment of such corporate authorities or judge of the county court may be just and right, due notice of such allowance, rejection or allowance in part to be at once given to the person having filed the verified statement. Any person filing such verified statement or any lot owner feeling aggrieved at the decision of such corporate authorities or judge of the county court making such allowance, rejection or allowance in part of any claim so filed, may within thirty days after the decision appeal therefrom to the circuit court of the circuit wherein such city or town may be located, such appeal to be taken upon notice to such corporate authorities or judge of the county court in the same manner and subject to the same restrictions as appeals from the board of county commissioners. [C. L. 1172.]

1665. Publication of notice of entry. Immediately upon the expiration of sixty days after the first publication of said notice as hereinbefore provided, at the proper land office, the corporate authorities or judge of the county court entering the same, his or their successors, shall give public notice thereof by publishing such notice in a newspaper published in the county in which such city or town shall be situated, or in case there shall be no newspaper published in such county then in the newspaper published nearest the said city or town — and in the latter case where there is no newspaper published in said county, copies

of said notice shall also be posted in not less than ten conspicuous places within the limits of said county; such notice shall be published not less than once a week for six consecutive weeks and shall contain an accurate description of the lands entered as the same is stated in the certificate of entry, and shall also contain a statement of the several amounts awarded and allowed for the expenses of procuring the entry and which will be assessed against the land constituting the town site in executing the deeds therefor. [C. L. 1173.]

1666. Posting notice. Such notice provided for in section eleven hundred and seventy-two shall direct that each and every person, association or corporation claiming to be an occupant or to have, possess or be entitled to the right of possession or occupancy of such lands or any lot, share or parcel thereof, shall within ninety days from the date of the first publication or posting of such notice, in person or by his, her or their or its duly authorized agent or attorney, sign a statement in writing containing an accurate description of the particular lot, lots, parcel or parcels of land in which he, she, they or it claim to have an interest; and the specified right, interest or estate so claimed therein, the character and value of the improvements thereon, and how occupied or possessed by such claimant, and for how long a time, and any other matter or thing illustrating or supporting such claimant's right to a deed of the tract so described, such statement to be verified by the affidavit of the party or parties signing the same. [C. L. 1174.]

1667. Statements to be recorded. The statement of the claimant provided for in the preceding section shall, together with the accompanying affidavits, be delivered to the said corporate authorities or judge of the county court within the time specified in said notice, and shall be by him or them filed and an abstract of the contents thereof, with name of claimant and date of filing, entered in a well-bound book to be kept for such purpose, which shall be known as "the record of claimants' statements." And all persons failing to furnish such statement as herein required within the time specified in said notice, except minors and insane persons, shall be forever barred of the right of claiming or recovering such lands or any interest or estate therein or any part or parcel thereof. [C. L. 1175.]

1668. Conflicting claims. Should any one or more persons, associations or corporations claim adversely the title to any lot or lots, parcel or parcels of land within the boundaries of such city or town, the party in possession, or if neither party be in actual possession, then the party first filing his application, shall be prima facie entitled to a deed of conveyance, and the party or parties claiming adversely shall within said ninety days after the first publication of the notice provided for in

section eleven hundred and seventy-two, file with the corporate authorities or judge of the county court a sworn statement as provided in section eleven hundred and seventy-four, and at the same time a notice that he, she or it contests the statement and application for deed hitherto made, and expects at once to begin an action in the district court to determine his, her or its right to the property; whereupon the corporate authorities or judge of the county court must suspend action on such disputed lot or parcel of ground until a proper certificate be furnished that the dispute has been decided or abandoned. Such party or parties claiming adversely, and having filed such notice of contest, must within ten days thereafter begin action in the district court for the purpose of determining the rights of all parties, in which action all persons claiming adversely to the plaintiff or plaintiffs may be joined as parties defendant, and if not so joined shall have the right to intervene. For the purposes of this section an action shall be deemed begun when a complaint has been filed in the office of the clerk of the court and a summons placed in the hands of a sheriff for service; provided, that personal service must be made or service by publication begun within sixty days thereafter. Upon the presentation of the clerk's certificate that no complaint has been filed and no action begun in accordance with the provisions of this section, the party aforesaid having the prima facie right shall be entitled to a deed of conveyance; and in case of action begun the party recovering therein shall be entitled to a deed of conveyance upon presentation of a certified copy of the final judgment or decree of the court in such action to the corporate authorities or judge of the county court. Upon receiving the certificate aforesaid or certified copy of judgment or decree the same shall be filed and an abstract of the contents entered in the record of claimants' statements; and the said corporate authorities or judge of the county court shall thereupon execute deeds of conveyance to the party or parties entitled to receive the same. All persons except minors and insane persons failing to file their notice of contest and to bring their action within the time herein prescribed shall be thereafter forever barred from setting up or asserting any claim, right or title to such lot or lots, parcel or parcels of lands so adversely claimed. [C. L. 1176.]

1669. Limitation as to claim. The amount of ground which any one claimant shall be entitled to receive a deed for in a single tract under the provisions of this act, unless said claimant or his grantors was in the actual peaceable possession of the same prior to its entry as herein provided for and had improved the same and is still in the occupancy thereof, may equal but not exceed two acres in extent; provided, that such ground be exclusively occupied by or in the possession of such claimant and have improvements thereon of not less than two hundred

dollars in value. Such claimant shall also be entitled to a deed for each additional lot not exceeding in area twenty-five hundred square feet on which he may have substantial improvements of not less than one hundred dollars in value. When any claimant shall make application for a deed to more than one tract or parcel he shall file in addition to his own affidavit as required by this act the affidavits of at least two disinterested witnesses showing the nature, character and actual cash value of the improvements upon such additional lot or lots so claimed. [C. L. 1177.]

1670. Expense — repayment secured. Each person shall upon filing an applicant's statement as herein provided be required to pay to the said corporate authorities or judge of the county court his proper and due proportion of the money lawfully expended in perfecting the title and procuring the entry of said land, including all streets, alleys, public grounds and parks, and all expenses necessarily incurred in making the survey and plat, for recording plat and publishing notices as required by this act, such proportion to be determined by the relation which the value, extent and area of such claimant's land bears to the whole amount of land claimed during the ninety days, and in addition thereto the sum of two dollars for the principal tract claimed and fifty cents for each additional lot of two thousand five hundred square feet claimed by the same person or persons, association or corporation, as a fee for executing the trust, taking affidavits, filing and abstracting statements and affidavits, and executing and acknowledging the deed as required by this act, which charges shall be in full payment for all expenses attending the execution of the trust. In case of appeals provided for in section eleven hundred and seventy-two, the sum of one dollar shall be paid for certified copy of statement of account filed and certificate of decision and award made; and pending such appeal and the review by the circuit court of any award or allowance of claims for expenses in procuring the entry of land, as provided for in section eleven hundred and seventy-two, the corporate authorities or judge of the county court must in making and apportioning expenses take care that their estimate be sufficient to meet the same and any possible increase made by the appellate tribunal — any surplus resulting from such estimate to be applied as herein provided. In case of any contest, and deposit of money as in this section provided by both parties, the corporate authorities or judge of the county court shall after final judgment and decree refund to the unsuccessful party or parties all money so advanced by such party or parties, except the sum of one dollar, which shall be retained as fees for taking and filing affidavits, statements, notice of contest, certified copy of decree, et cetera. [C. L. 1178.]

1671. Deeds to be given. After the expiration of ninety days from the date of the first publication of the notice required by section eleven hundred and seventy-two, the corporate authorities or judge of the county court shall proceed to award the lot or lots, parcel or parcels of land as provided in this act, and for that purpose shall as soon as practicable and as near as practicable in the order of the time of the filing of claimant's statements examine each and every claim, read proofs filed and hear additional testimony if deemed advisable, and if the claim should be found to comply with the provisions of this act, and no adverse claim and notice of contest shall have been filed, the said corporate authorities or judge of the county court shall proceed forthwith to make such claimant or claimants a good and sufficient deed of conveyance for such lot or lots or parcels of land so claimed. [C. L. 1179.]

Deed, regular upon its face, made by county judge as trustee under Town Site Law, is presumptively valid. Such presumption is rebuttable. *Goldberg v. Kidd*, 5 S. D. 169; 58 N. W. Rep. 574.

1672. Unclaimed lands. [Ch. 165, '93.] § 1. When any lots or parcels of land, within the limits of any city or town, shall remain unclaimed, after the expiration of the time allowed by this act, for filing of claimant's statements, it shall be the duty of the corporate authority or the judge of the county court, to convey the lots or parcels of land, so remaining unclaimed, by good and sufficient deed, to the board of education or district school board of such city or town or of the school district in which such city or town is situated, to be taken and disposed of by such board of education or district school board, for school purposes, and for the exclusive use and benefit of the occupants of such town site, under such limitations as are provided by this act. [C. L. 1180.]

1673. Who may sell. [Ch. 165, '93.] If there is no such board of education or district school board, then the corporate authorities or judge of the county court shall sell and dispose of the said unclaimed lots or parcels of land so remaining, for school purposes, and for the exclusive use and benefit of the occupants of such town site under the directions, limitations and provisions contained in this act. [C. L. 1181.]

1674. Unclaimed lands appraised. The board of education, district school board, corporate authorities or judge of the county court aforesaid shall appoint three competent and suitable freeholders of such city or town a board of appraisers whose duty it shall be to make a careful inspection and examination of all the unclaimed lots or parcels of land

aforesaid, and upon each of such lots or parcels of land they shall affix a reasonable and just valuation, and upon the completion of their appraisalment they shall make and return a full and complete report of their proceedings and appraisalment to the board of education, corporate authorities or judge of the county court, which said report shall contain a full schedule of each and every lot or parcel of land remaining unclaimed, giving an exact description of said lots by their numbers and the number of the block, and all parcels of land not so numbered shall be described by metes and boundaries, and upon each lot or parcel of land separately they shall designate the valuation thereof as fixed by their appraisalment; said appraisalment and report shall be subscribed and sworn to by at least two of said appraisers. [C. L. 1182.]

1675. Public sale of unclaimed lands. [Ch. 165, '93.] The board of education, district school, corporate authorities or judge of the county court shall within thirty days after the receipt of the aforesaid report of said board of appraisers give public notice that all such unclaimed lots or parcels of land, or so much thereof as may be considered for the best interest of the school district, will be sold at public auction to the highest bidder for cash; said notice to be given by publication in not less than three newspapers of general circulation in the state and for a period of not less than thirty days immediately prior to such sale, specifying the time and place when said unclaimed lots or parcels of land will be sold, together with a description of the same as returned by the board of appraisers. [C. L. 1183.]

1676. Private sale. [Ch. 165, '93.] At the time and place appointed in said notice the board of education, district school board, corporate authorities or judge of the county court shall offer for sale at public auction subject to competitive bids all the lots and parcels of land or so much thereof as may be considered for the best interest of the school district, returned by the report of said board of appraisers as unclaimed; provided, that no bid shall be received or lot or parcel of land sold for a less sum than the appraised valuation; and such sale shall continue open from day to day until all such lots or parcels of land, or so much thereof as may be considered for the best interest of the school district, shall have been offered for sale. Any lots or parcels of land remaining unsold at the close of such sale for want of bids equal to the appraised valuation thereof may thereafter be sold at private sale by said board of education, district school board, corporate authorities or judge of county court for a sum of money not less than the appraised valuation thereof, and not otherwise. [C. L. 1184.]

1677. Purchaser to pay for deed. [Ch. 165, '93.] Any purchaser at such sale, in addition to the amount of purchase money paid for any

lot, lots or parcel of land shall pay to the board of education, district school board, corporate authorities or judge of county court the sum of two dollars as a fee for making, executing and acknowledging a deed of conveyance therefor, and all such lots or parcels of land purchased by any one person may be conveyed to such purchaser in one deed, which fee shall be in full for all charges of conducting sale, giving notice, appointing appraisers, et cetera. [C. L. 1185.]

1678. Proceeds applied. [Ch. 165, '93.] The proceeds derived from the sale of such lots or parcels of unclaimed land, after first paying the expense of advertising, printing and a per diem of not more than three (3) dollars per day to each member of the board of appraisers, for the days actually and necessarily employed by them, in making such appraisements and report as aforesaid, and other expenses actually and necessarily incurred, in the proper conduct and management of such sale shall be immediately turned over, at the close of said sale, by the board of education or district school board to the treasurer of such board of education or district school board, to be, by said treasurer, placed to the credit of the school house fund of said city or town, to be used, exclusively, for the purchase of ground for school buildings, for the erection, enlarging, repairing and furnishing of school buildings, and the payment of outstanding bonds, warrants, or other indebtedness, contracted or created in the erection or construction of school houses and procuring grounds. And if there be no such board of education or district school board, then the net proceeds of such sale of unclaimed lots or parcels of land, shall be held by the corporate authorities or the judge of the county court, in trust, as a school house fund for the exclusive use and benefit of the occupants of such town site, to be paid over to the treasurer of such board of education or district school board, whenever such board of education or district school board shall have been duly elected and qualified. [C. L. 1186.]

1679. Surplus, how disposed of. [Ch. 165, '93.] In case there should be found any surplus on hand over and above receipts for fees and awards for expenses arising from the conveyance of lots, as provided in section eleven hundred and seventy-eight, then such surplus shall, as soon as ascertained by the corporate authorities or judge of the county court, be accounted for and turned over to the treasurer of the board of education or district school board, to be, by such treasurer, placed to the credit of the school house fund to be disbursed and applied as provided in section eleven hundred and eighty-six, as amended, providing for the disbursement of the proceeds derived from the sale of unclaimed lots or parcels of land. [C. L. 1187.]

1680. Corporate authorities may select land for public uses when compensation for. [Ch. 153, '95.] § 1. Whenever any portion of the public lands of the United States shall be entered at the proper land office as a town site by the corporate authorities of any town, village or city, it shall be the duty of such corporate authorities to immediately select so much of said land for the use of said corporation as they shall deem necessary and proper for the purpose of public parks, public buildings and public school buildings; provided, however, that they shall not select any lands settled upon and occupied as a town site by individuals or corporations at the time of the entry of such town site; provided, further, that if at the time of such selection any of said lands are settled upon and occupied so as to entitle the claimant to a deed therefor, and the corporate authorities deem it for the best interests of said corporation to obtain said parcels of land to complete their selection or to have such selection in a compact form, the said corporate authorities are hereby authorized to pay a reasonable compensation for said lands so settled upon and occupied.

1661. Expense. [Ch. 153, '95.] § 2. The said corporation shall pay its proportionate share of the expenses as provided in section eleven hundred and seventy-two of the compiled laws.

1682. Deeds. [Ch. 153, '95.] § 3. Deeds for said property shall be given as provided in section eleven hundred and seventy-nine of the compiled laws.

1683. Expiration of trustee's term of office. Whenever the term of office of any corporate authorities or judge of the county court having made entry of a town site shall expire, or he or any one or more of said corporate authorities shall resign or be removed from office, he or they shall turn over all books and papers relative to such entry to his or their successor or successors in office, with full report of the condition of the trust and receipts and disbursements thereunder, and thereafter the said trust shall be executed in every particular by such successor or successors. Any wilful violations of the provisions of this act by the corporate authorities or judge of the probate court shall be held and considered a misdemeanor; any such corporate authorities or judge of the county court wilfully making out a deed to any party not entitled to receive the same shall be deemed guilty of a misdemeanor; and any such corporate authorities or judge of the county court wilfully misappropriating funds received by them in the execution of this trust shall be held guilty of embezzlement. [C. L. 1188.]

CHAPTER 12. HIGHWAYS, BRIDGES AND FERRIES.

ARTICLE 1. IN COUNTIES WITHOUT CIVIL TOWNSHIP ORGANIZATION.

STATE ROADS.

1684. Section lines are public highways. All section lines shall be and are hereby declared public highways as far as practicable; provided, that nothing in this act shall be so construed as to interfere with existing highways in the settled portions of the state. [C. L. 1189.]

1685. The board of county commissioners of each county shall have power to vacate or change the highways within their respective counties, located by the legislative assembly as hereinafter provided. [C. L. 1190.]

1686. The public highways along section lines, as declared by section eleven hundred and eighty-nine, shall be sixty-six feet wide and shall be taken equally from each side of said lines unless changed as provided in the preceding section. [C. L. 1191.]

Reservation of school sections numbers 16 and 36 is not a grant or reservation for public uses, and such lands are subject to the highway easements without compensation to the owner. *Riverside Township v. Newton*, S. D. ; 75 N. W. Rep. 899.

HIGHWAYS RUNNING THROUGH MORE THAN ONE COUNTY.

1687. Petition. When fifteen freeholders of any county shall petition the board of commissioners of such county for the location, change or vacation of any highway running into more than one county, six of which freeholders shall reside in the immediate neighborhood of such highway, setting forth in such petition the beginning, course and termination of the highway proposed to be located or vacated, or of the change desired to be made, together with the names of the owners and occupants or agents of the lands through which the same may pass, the county clerk of such county shall notify the county clerk of each of the counties in which such highway is to be run, located, vacated or changed, of the filing of such petition, accompanying such notice with a copy of such petition, which shall be by such county clerks laid before the several boards of county commissioners at their next session thereafter, when such board shall appoint commissioners according to the regulations hereinafter provided. [C. L. 1192.]

1688. Duty of commissioners — notice. Upon the board of commissioners of the county in which such petition is first filed being satisfied that notice thereof has been given at least twenty days before the session of such board at which such petition is to be heard, by publica-

tion in a newspaper of each county in which such highway is to be run, vacated or changed, for three weeks successively, or by written or printed notices posted up in three of the most public places in the neighborhood of such highway in each of such counties, such board shall appoint a commissioner to examine such highway. [C. L. 1193.]

1689. Notice of appointment of examiners. Immediately upon the appointment of such commissioner the county clerk of such county must notify the county clerk of each of the counties interested, specifying in such notice the time and place when such commissioners shall meet to commence the examination of such highway, when such last-mentioned county clerk and the county clerk of the county where such petition is first filed shall issue precepts to the sheriffs of their respective counties directing them to notify such commissioners of such appointment and the time and place of their meeting. [C. L. 1194.]

1690. Number of examiners — disagreement. Each board shall appoint one commissioner, and in case the number is equal and cannot agree the commissioners thus appointed shall appoint another, who shall perform the same duties and receive the same fees as those first appointed. [C. L. 1195.]

1691. Oath and duty. At the time and place designated in the notice given by the county clerk of the county in which such petition is first filed, such commissioners shall meet, and having first taken an oath to be administered by some authorized officer to faithfully perform their duties, shall proceed to examine the highway proposed to be located, vacated or changed, and in such examination may employ a surveyor and a necessary number of chain carriers and markers. [C. L. 1196.]

1692. Report. After such commissioners shall have completed their examination they shall draw up a report of their proceedings, setting forth the highway proposed to be located, vacated or changed by course and distance, and recommending therein according to the opinion of the majority of such commissioners either that the prayer of such petition shall be granted or rejected, a copy of which report shall be returned to the board of commissioners of each of the counties interested at their next session thereafter. [C. L. 1197.]

1693. Decision. Upon the return of such reports the board of commissioners shall proceed to determine the prayer of such petition, and if there shall be no remonstrance against the same and it is recommended in such report, such board may if they deem it expedient declare it granted, and if so declared shall direct the county clerk to notify the county clerks of each of the other counties interested thereof. Then if there be no remonstrance pending in either county interested

the county clerk of each of such counties shall notify the supervisors of the road districts in his county through which such highway passes or the change is made, when such supervisors shall open so much of such highway as lies in their respective districts, and such road supervisors must in like manner be notified of the vacation of any highway or of any part thereof. [C. L. 1198.] •

1694. Dismissal. If such commissioners do not recommend the prayer of such petition to be granted, the boards of commissioners of the counties interested shall order it to be dismissed; but such order of dismissal shall not be a bar for other petitions thereafter concerning the same subject matter. [C. L. 1199.]

1695. Remonstrance. If at the session of the board of commissioners at which the report of the commissioners appointed to examine such highway is presented, any person shall remonstrate against granting the prayer of the petition, setting forth in writing that he is damaged in a sum mentioned, by the location, vacation or change of such highway, to the truth of which he shall take and subscribe an oath, such board shall appoint three persons residents of such county to review that part of such highway whereof such complaint is made, and shall direct the county clerk of such county to notify the county clerk of each of the other counties interested in such remonstrance, when further proceedings touching such petition shall be continued until the ensuing term of such board. [C. L. 1200.]

1696. Viewers to assess damages. Such reviewers, at the time and place designated by the board of commissioners to whom such remonstrance is presented, shall meet, and having taken an oath before some officer authorized to administer oaths to faithfully perform their duties as such reviewers, shall proceed to examine that part of such highway or the change thereof complained of, and having done so shall at the next term of such board report their proceedings to such board, in which report they shall specify the amount of damages sustained by the person remonstrating, if any; whereupon such board shall determine whether the damages assessed are greater than the utility of the proposed highway or change, and if they shall be of opinion that the prayer of the petition shall not be granted they shall direct the county clerk of such county to notify the county clerk of each of the other counties interested thereof, and continue further proceedings in the premises until the next term thereafter; but if they shall be of the opinion that the damages should be paid and the prayer of the petition be granted, they shall direct such county clerk to notify the county clerk of each of the counties interested of the amount of such damages, and shall continue further proceedings to the next term thereafter. [C. L. 1201.]

1697. Petition, when rejected. If more freeholders residing along the highway proposed to be located, vacated or changed remonstrate against granting the prayer of such petition than those of the same county petition therefor, the board of commissioners of such county shall decide against such petition and shall direct the county clerk of such county to notify the county*clerk of each of the other counties interested therein of such fact and decision, and continue further proceedings in the premises until the ensuing term. [C. L. 1202.]

1698. Final determination. At the next term after the reception of notice of any remonstrance and the proceedings thereon, the county clerks of such counties shall lay the same before their respective boards of commissioners, who shall determine whether the prayer of the petition ought to be granted, and shall cause the county clerk of each county interested therein to be notified, and if the boards of commissioners of a majority of such counties decide in favor of such petition, at the term of such boards when the same is ascertained such highway shall be declared located, vacated or changed, and such supervisors notified thereof as hereinbefore provided; but if a majority of such boards decide against such petition it shall be declared dismissed whenever it is ascertained, and all damages declared assessed shall be paid equally by the counties interested; and if such reviewers shall fail to assess any damages the person asking the same shall pay the costs of such review. [C. L. 1203.]

1699. Fees. Such commissioners appointed to examine such highway, and such reviewers, shall receive each two dollars for every day they may be necessarily employed, and such surveyor, chain carriers and markers shall receive such compensation as the board of county commissioners where such petition is first filed shall deem reasonable, to be paid equally by each county interested. [C. L. 1204.]

1700. Road recorded. Whenever a highway is located, vacated or changed the order therefor shall be entered of record in the order book of the board of commissioners of each county interested, in which county such highway or change thereof shall be particularly described by course and distance. [C. L. 1205.]

HIGHWAYS NOT ON SECTION OR QUARTER-SECTION LINES.

1701. Petition. Whenever twelve freeholders of the county, six of whom shall reside in the immediate neighborhood, shall petition the board of county commissioners for the location, vacation or change of any public highway other than on section or quarter-section lines, such board, 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 highway or change at least twenty days before the meeting of the board at which such petition is to be presented, shall appoint three persons to view such highway. [C. L. 1206.]

1702. Sheriff to notify viewers. The county clerk of such county shall issue a precept to the sheriff thereof commanding him to notify such viewers of the time, place and object of their meeting, and such viewers at such time and place, after having taken an oath before some officer authorized to administer oaths to faithfully perform their duties, shall proceed to view the highway or such change; and if they shall deem the highway to be located or the change to be made of public utility they shall lay out and mark the same on the best ground, not running through any person's inclosure or other improvement of one year's standing without the owner's consent, unless upon examination a good way cannot otherwise be had. [C. L. 1207.]

1703. Report of viewers. Such viewers or a majority of them shall make a report of their proceedings at the ensuing session of the board of commissioners of the county in which such location, change or vacation may be made, giving a full description of such location, change or vacation by metes and bounds and by its course and distance, except that in case of the vacation of a road or any part thereof such description only as will designate it clearly shall be required; and in such case a copy of the order vacating such highway shall be recorded by the proper county clerk of the county, and shall cause the supervisors of the road district to be notified accordingly. [C. L. 1208.]

1704. Opening of the road. If no objections be made to such proposed highway, vacation or change, such board shall cause a record thereof to be made and shall order the same to be opened and kept in repair, which order shall be transmitted to the trustees of any of the townships in which such location or change is made, and shall cause notice thereof to be given to the proper supervisor to work such location or change. [C. L. 1209.]

1705. Appointment of viewers. If any person through whose land such highway or change may pass 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 reviewers, and assign a day and place for them to meet. [C. L. 1210.]

1706. Oath — report. Such reviewers, having five days' notice to be given by the party remonstrating, shall meet at the time and place designated and take an oath faithfully to discharge the duties assigned them,

and shall then or on any other day to which a majority may adjourn prior to the next session of said board proceed to review the proposed highway and assess the damages if any which such objector may sustain from such highway or change being opened, vacated or continued through his lands, and shall report the same to the ensuing session of such board. [C. L. 1211.]

1707. Action of board on report. If a majority of the viewers assess and report damages in favor of the objector, and the board shall consider the proposed highway, vacation or change to be of sufficient importance to the public, they shall order the costs and damages to be paid out of the county treasury; but if a majority report against the claim for damages the objector 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. [C. L. 1212.]

Toll road may be condemned as other property for highway purposes, and the owner, whether an individual or a corporation, may, when made a party to the condemnation proceedings, prove its damages and recover the same in such action. *Lawrence County v. Deadwood & G. Tollroad*, 75 N. W. Rep. 517.

1708. Setting aside assessment of damages. If it shall be made to appear to the board that the damages assessed are unreasonable they may set aside such assessment and order another review under the same regulations as provided in case of the first review. [C. L. 1213.]

1709. Objection before final action. If any one or more freeholders residing in such county along such proposed highway, vacation or change shall object to the same at any time before final action thereon, as not being of public utility, other viewers may be appointed who shall proceed on a day to be by them designated, after having taken an oath faithfully to discharge the duties assigned them, to examine the proposed highway, and shall make report to such board at their next session whether or not in their opinion the said highway, vacation or change will be of public utility. [C. L. 1214.]

1710. Report of reviewers. If a majority of the viewers last named report against the public utility of such highway the same shall not be established unless the petitioners will open and maintain the same at their own expense; but if they report favorably thereto the objector shall pay the costs of the review and the highway shall be recorded and ordered to be opened and kept in repair; but in no case shall a highway be opened, vacated or a change be made if a majority of the freeholders residing along such proposed highway or along such change or along the highway proposed to be vacated shall remonstrate against the same. [C. L. 1215.]

1711. Payment of damages. No such highway shall be opened, worked or used until the damages assessed therefor shall be paid to the persons entitled thereto or deposited in the county treasury for their use, or they shall give their consent thereto in writing filed with the county clerk of such county. [C. L. 1216.]

1712. Appeals. Any person aggrieved by any decision of any board of commissioners may appeal therefrom to the circuit court of such county upon his filing a bond with a surety and penalty to be approved by the register of deeds of such county, conditioned for the due prosecution of such appeal and the payment of costs if costs be adjudged against him, and in case proceedings shall be had in more than one county the county clerk of each county on being notified of such appeal by the county clerk of the county in which the appeal is taken, shall transmit to the clerk of the court to which the appeal is taken all the proceedings in such county, and upon the determination of such appeal such clerk shall notify the county clerk of each of the counties interested thereof. [C. L. 1217.]

HIGHWAYS ON SECTION AND QUARTER-SECTION LINES.

1713. Action without survey or view. The board of county commissioners has power to establish, change and vacate highways upon section and quarter-section lines when the initial and terminal points and the course of the highway can be clearly described, without the appointment of viewers or the services of a surveyor; but in all other respects the proceedings therein shall be governed by the provisions of the preceding subdivision of this article relating to the establishment, vacation and change of highways not on such lines. [C. L. 1218.]

ESTABLISHMENT OF ROADS BY CONSENT.

1714. Roads located without viewers. Public roads may be established without the appointment of viewers, provided the written consent of all the owners of the land to be used for that purpose be first filed in the county clerk's office, and if it is shown to the satisfaction of the board of county commissioners that the proposed road is of sufficient public importance to be opened and worked by the public they shall make an order establishing the same, from which time only shall it be regarded as a public road. [C. L. 1219.]

1715. Expenses. If a survey of the establishment of the road named in the preceding section is necessary, the board of county commissioners before ordering such survey shall require the parties asking for the establishment of such highway to pay the expenses of such survey. [C. L. 1220.]

MISCELLANEOUS PROVISIONS.

1716. Width of road. No road shall be less than sixty-six feet wide; and the order for laying any highway must specify the width thereof. [C. L. 1221.]

1717. County or township lines. Public highways established on the county or township lines shall be opened and repaired by the supervisor of the proper road districts on each side thereof, and by the joint labor of the hands in each of such districts in each county or township. [C. L. 1222.]

1718. Highway through inclosures. Whenever any public highway shall have been laid out through any inclosed land the supervisor shall give the occupant of such land, or the owner, if a resident of the road district, sixty days' notice in writing to remove his fence; but such owner or occupant shall not be compelled to move such fence between the first day of April and the first day of November; and if such fence is not removed pursuant to such notice such supervisor shall cause the same to be done. [C. L. 1223.]

1719. Credit allowed on highway tax, when. If the owner or occupant shall not have been allowed damages for the laying out of such highway upon his land, the supervisor shall give the person removing such fence credit on his highway tax for any amount that the supervisor shall deem just, subject to the approval of the county commissioners. [C. L. 1224.]

1720. Nonuser vacates. Every public highway already laid out or which may hereafter be laid out and which shall not be opened and used within six years from the time of its being laid out, shall cease to be a highway for any purpose whatever; but if any distinct part thereof shall have been opened and used within six years such part shall not be affected by the provisions of this section, nor shall this section be applied to streets and alleys in any town; provided, however, that the board of county commissioners shall decide that public necessity does not require such road kept open, which decision shall be recorded by the clerk of the court, whereupon said vacated highway shall vest in the rightful owner who may have the title according to law of the property on each side of said highway. [C. L. 1225.]

1721. Settlers decreed freeholders. In all applications for the location, change or vacation of any public highway, actual settlers upon any public lands in any county in this state shall have and possess all rights in this act granted to freeholders. [C. L. 1226.]

1722. Established by user. All public highways which have been or may hereafter be used as such for twenty years or more shall be deemed public highways. [C. L. 1227.]

1723. Viewers disinterested. No person owning lands, or who is related by consanguinity to any person owning lands along any proposed highway or change, shall be competent to act as commissioner, viewer or reviewer thereof. [C. L. 1228.]

1724. Compensation of viewers. Viewers and reviewers appointed under this act shall receive two dollars for every day they shall be necessarily employed as such. [C. L. 1229.]

1725. Benefits considered. The benefits to accrue to any owner, occupant or claimant of lands by reason of opening any highway are to be considered by the commissioners or the viewers in the determination and award of damages for the same. [C. L. 1230.]

1726. Private roads. Any person may have a private road laid out, changed or vacated upon presenting a petition to the board of commissioners of the county in which such petitioner resides, under regulations hereinbefore provided for roads running through one county only; provided, that such board may order such private road to be laid out, changed or vacated without any view if there be no remonstrance against such petition; and the petitioner shall open and keep in repair such road at his own expense. [C. L. 1231.]

1727. Public lands — damages. When any person shall acquire the title to government lands over which any road has been or may hereafter be duly laid out, subsequent to the laying out of such road, the person so acquiring such title shall within three months after receipt of his patent therefor assert his claim for damages in the manner hereinbefore provided in case of locating highways, and such road shall remain and be a public highway; but his damages if any shall be paid, and in case of a failure for that length of time to assert his claim for damages as aforesaid he shall thereafter be debarred from asserting such claim. [C. L. 1232.]

1728. Occupying claimants. All public lands in this state, settled upon and occupied by settlers thereon, shall be subject to all the provisions of this act so far as the rights and liabilities of such settlers are concerned. [C. L. 1233.]

1729. Line roads one-half each — side of line. When a public highway is laid out and located upon the line dividing the land of two individuals, one-half of the same must be taken if practicable from the land of each. [C. L. 1234.]

1730. Bond for costs. In all cases the person or persons remonstrating against the establishment, change or vacation of a public highway, or who may petition for damages occasioned thereby, must give to the board of county commissioners a bond with approved security for the payment of all costs occasioned by such remonstrance or petition for damages in case the highway be established or no damages be allowed. [C. L. 1235.]

1731. Timber along highway. On all public highways of not less than sixty-six feet in width the owners, occupants or claimants of adjoining lands may use and occupy one rod in width of such highway adjoining such lands for the purpose of cultivating the growth of timber and trees thereon; provided, that the same be kept continuously in good order and under full timber and tree cultivation. [C. L. 1236.]

1732. Hedge protection. Any person cultivating a hedge or trees upon his land adjoining a public highway and desiring to fence the same may place such fence seven feet over and upon such highway; provided, that it do not obstruct the public travel. [C. L. 1237.]

BRIDGES.

1733. Bridges part of highway. Bridges erected or maintained by the public constitute a part of the public highway. [C. L. 1238.]

1734. Bridges across navigable rivers—petition. Whenever one-third of the resident taxpayers of any county of this state, as shall appear by the last preceding assessment roll of such county, shall petition the board of county commissioners of said county, praying for an appropriation to build a bridge across any navigable river on the line of said county, setting forth therein the location of such bridge as near as may be, its estimated cost, and the necessity therefor to accommodate the general traveling public, the manner in which it is proposed to pay for said structure, and the time when it will be completed, said petition to be duly verified by the affidavits of at least fifteen of the petitioners therein named, it shall be the duty of said board of county commissioners to publish a notice in the official paper of said county once weekly for three weeks, briefly stating the subject of said petition and that the same will be heard and considered at the next regular meeting of said board. At the time appointed for the hearing of said petition the said board of county commissioners shall, and it is hereby made their duty, to investigate the need for said bridge, and, finding the same to be demanded for the accommodation of the traveling public, shall by resolution duly entered upon the minutes of said board appropriate

toward the building of such bridge, from the county treasury, a sum not exceeding one-half of the estimated cost of such bridge, to be paid as hereinafter provided; provided, however, that the appropriation hereinbefore mentioned shall be conditional on a sufficient bond and guaranty of the remaining one-half or more, as the case may be, of the cost of such bridge; provided, further, that the consent of the general government to span said river shall first have been obtained. [C. L. 1239.]

1735. County aid conditional. If the remaining one-half of the cost of said bridge shall be made up by an appropriation from any neighboring state or by any municipality in this state, to be expended under a commission or through any other judiciary agency, it shall then be the duty of said board of county commissioners to appoint a committee of their own number, whether three or more, to meet such other municipal agency, confer with its members and advise and assist in the accomplishment of such improvement in the best possible manner, and when the work is completed and approved jointly by such agency and committee of the board of county commissioners, which approval shall be in writing and duly reported to such board and recorded in the minutes thereof, the board shall thereupon order the amount of the appropriation paid to the contractor or contractors of such improvement by warrant upon the county treasury in the usual form and manner. [C. L. 1240.]

1736. May vote bonds. Where the one-half or such other proportion as may be of the cost of such improvement shall be provided for by any municipality within this state, it shall be lawful for such municipal corporation by a majority vote of the legal voters thereof after ten days' notice to meet the necessary expense by the issuance of bonds bearing interest not to exceed seven per centum per annum and not to run longer than twenty years after date of issue, nor to be sold for less than par value, interest payable semi-annually; provided, that the limit of indebtedness of such corporation under the act of congress of July thirtieth, eighteen hundred and eighty-six, in relation to state legislation, be not thereby exceeded. But if the limit of debt of such municipality would be thereby exceeded, then it shall be lawful for such municipality to make a sufficient tax levy for general purposes to meet the necessary expenditure in the construction of such bridge, and when the same shall be completed and accepted the share of the cost thereof to be borne by such municipality shall be paid out of the general fund by orders drawn in the usual form and manner. [C. L. 1241.]

1737. Cost of bridge limited. It is hereby provided that not more than one wagon bridge in each county so situated shall be built under this act, and that the total cost of such bridge shall in no case exceed the sum of fifty thousand dollars. [C. L. 1242.]

ROAD SUPERVISORS.

1738. Appointment. At the annual meeting of the county commissioners in January of each year, or as soon thereafter as practicable, it shall be the duty of the board of county commissioners of each of the organized counties of this state to apportion their respective counties into one or more road districts where such county is not at present formed into townships, and shall appoint for each district a road supervisor who shall hold his office until the first of January succeeding his appointment, and shall take an oath to faithfully discharge his duties as such road supervisor. [C. L. 1243.]

1739. Vacancies, how filled. The board of county commissioners of each county shall have power to fill all vacancies and shall fill all vacancies that may occur for any reason in the office of road supervisor. [C. L. 1244.]

1740. Duties. The road supervisor of each road district or township shall obtain the names and make out a list of all male persons between the ages of twenty-one and fifty years residing within each road district, which list shall be completed on or before the first day of March in each year, and in case any person as aforesaid shall locate in any road district after the first day of March the supervisor shall enroll his name and he shall be liable to labor on the road at the same time and in the manner that those originally enrolled are liable to labor, but any person who has labored that year in any road district and has a certificate thereof shall be credited with the labor as performed, in the same manner as though the labor had been performed in the district in which he resides. [C. L. 1245.]

1741. Poll tax — labor. [Ch. 179, '95.] Every male person between the ages of twenty-one and fifty years shall be subject to a poll tax of one dollar and fifty cents, which must be paid in money or by one day's labor in each year on the public highways within his road district at the time and place directed by the road supervisor; provided, that all members in good standing of any regularly organized volunteer fire company within the state shall be exempt from the provisions of this section. [C. L. 1246.]

1742. Provisions of this act, how construed. [Ch. 179, '95.] § 2. That this act shall be construed to apply to the provisions of any charter, general or special, of any incorporated town, village or city within this state.

1743. Notice given in person. The road supervisors must between the first days of April and December of each year give at least twenty-four hours' notice to all persons subject to road labor as aforesaid to perform the work necessary on the public highways within their respective district, and such notice shall specify the time when and place where they are to appear for that purpose. [C. L. 1247.]

1744. Penalty for neglect to pay. Every person subject to labor on the public highways, who has been duly notified to work thereon as hereinbefore provided, who shall not commute or pay the sum of one dollar and fifty cents as provided by section twelve hundred and forty-six, and who shall refuse or neglect without good cause to appear as above provided, shall for every day's refusal pay the sum of one dollar. [C. L. 1248.]

1745. Supervisor to make complaint. Every supervisor of highways may within six days after any person shall become liable for the payment of any sum of money under the provisions of this act, unless a satisfactory excuse be rendered to him by the person so liable, make a complaint in writing and on oath to some justice of the peace of the county, stating the default, neglect, refusal or other cause by reason of which such person became so liable, which complaint shall be in the name of the state of South Dakota as plaintiff, and the party liable for such tax as defendant, and no fees of officers, costs or expenses in court in enforcing the provisions of this chapter shall be paid by or be a charge upon the state or county, but shall be collected from the defendant. [C. L. 1249.]

1746. Duty of justice on complaint. The justice of the peace to whom such complaint shall be made shall forthwith issue a summons directed to the defendant in the form provided in the justices' code in a summons for relief, returnable in not less than two and not more than six days; and it shall be the duty of any sheriff or constable to whom it is delivered to forthwith serve the same. [C. L. 1250.]

1747. Proceeding to collect tax. On the return day of such summons, or within such reasonable time thereafter as the justice shall allow, if no sufficient cause shall be shown to the contrary, the justice shall render a judgment in favor of the state of South Dakota against such person for the sum for which such person shall have become liable to pay on account of the default, neglect or other delinquency mentioned.

in the complaint and for the delinquent tax, with the cost of the prosecution, and shall forthwith issue an execution under his hand directed to the sheriff or any constable of the county, as provided in the justices' code, and returnable at the time prescribed therein, commanding him to levy the amount of such judgment, including the costs of the proceedings, of the goods and chattels of such defendant, and nothing shall be exempt from such execution except the absolute exemptions. [C. L. 1251.]

1748. Execution. The sheriff or constable to whom such execution shall be delivered shall forthwith proceed to execute the same, and he shall pay the moneys collected thereon to the justice of the peace who issued the execution, who shall pay the same to the supervisor who entered the complaint, to be by him expended in improving the roads and bridges in his district. [C. L. 1252.]

1749. Supervisor not excuse payment. The acceptance by a supervisor of an excuse for a refusal or neglect shall not in any case exempt the person excused from paying for or working the tax for which he shall have become liable during the year. [C. L. 1253.]

1750. Road tax worked, when. Any road tax levied by the board of county commissioners in addition to the poll tax may be worked out in the road district in which such person resides when it is a personal tax or a tax on personal property, or in the road district where the real property is situate on which the tax is levied, at the rate in all cases of one dollar and fifty cents per day. [C. L. 1254.]

1751. Work certified for tax. The road supervisor must obtain a list of all the road tax assessed on each individual; and a certificate by the supervisor for the amount worked out must be taken by the treasurer or collector of the county in payment to that amount of said tax. [C. L. 1255.]

1752. Tax expended, how. The board of county commissioners must order the expenditure of all road tax paid into the county treasury in the improvement of the highways, paying the road supervisors, purchasing implements and repairing bridges, in each road district, under such regulations as they may deem most expedient for the public interest, and for this purpose shall order the payment of such sum by the treasurer to the parties performing such labor upon the certificate of the road supervisor; provided, that such funds shall be expended in the road district in which the person resides when it is a personal tax or a tax on personal property, and where the real estate is situate when it is a tax on real estate. [C. L. 1256.]

[Ch. 125, '89.] "And, provided further, that when the road tax in any road district has been worked out as provided in section sixty-eight (68), of this chapter, and there are no funds available for paying the road supervisors, the county commissioners may levy a tax, not exceeding one mill on the dollar, for such purpose upon the taxable property of the road district in which such deficiency occurs, to be paid in cash to the county treasurer as other taxes are collected and paid."

1754. Obstructions in highways. 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. [C. L. 1257.]

1755. Penalty for obstructing. If any person or persons shall wilfully, 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. [C. L. 1258.]

Persons opening, near a public highway, a dangerous excavation, is bound to guard the same. Upon failure to do so are liable for injury sustained therein. *Sanders v. Reister*, 1 Dak. 151; 46 N. W. Rep. 680.

1756. Reports. [Ch. 127, '99.] § 1. On or before the first Monday of January of each year, the several road supervisors shall each make a report in writing to the board of county commissioners of his doings as such supervisor during the preceding year, together with the stub book furnished him by law, which shall show whether such tax has been worked, or money paid for same, and the county commissioners shall compare said stub books with the reports of the road supervisors of the several road districts.

1756a. Money paid county treasurer. [Ch. 127, '99.] § 2. It shall be the duty of said road supervisors to pay over to the county treasurer any money which has been paid to him that has not been expended by him upon the roads in his district.

1756b. Report — what to contain. [Ch. 127, '99.] § 3. The report shall also show the amount of labor performed, the number of day's labor necessarily performed by himself, in the discharge of his duties, and if any money is due him for such services the county commissioners shall thereupon cause a warrant to be drawn in favor of such supervisor at one dollar and a half per day, payable from the common road fund, belonging to said district, in the county treasury.

1757. Penalty for refusal to serve. Every person who shall be elected or appointed a road supervisor according to the provisions of this article and shall fail, refuse or neglect to qualify as such road supervisor

for thirty days after having been duly notified of his election or appointment by the county clerk, shall forfeit the sum of ten dollars, to be collected upon a complaint made by any citizen before a justice of the peace of the county, together with all the costs of the prosecution, which forfeitures shall go into the common road fund of the district in which he resides. [C. L. 1260.]

1758. Continued use not considered legal highway. [Ch. 100, '93.] § 1. The continued use of any road or way heretofore traveled or which shall hereafter be traveled by the public across any of the public lands belonging to the state, or across the land of any private person, or upon and parallel to the right of way of any railroad company in this state, shall not be deemed to have constituted such road or way a legal highway, or a charge upon the town in which the same is situated; and no rights or benefits shall inure to the public or any individual by the use thereof.

ARTICLE 2. IN COUNTIES WITH CIVIL TOWNSHIP ORGANIZATION.

PUBLIC HIGHWAYS.

1759. Public roads defined. All public roads and highways within this state which have been open and in use as such and included in a road district in the town in which the same are respectively situated during twenty years next preceding the time when this act shall take effect [March ninth, eighteen hundred and eighty-three], are hereby declared to be public roads or highways and confirmed and established as such whether the same have been lawfully laid out, established and opened or not. [C. L. 1261.]

1760. No appeal taken — established. Every road laid out by the proper authorities as provided for in this article from which no appeal has been taken within the time limited for taking such appeal, is hereby declared a public highway to all intents and purposes, and all persons having refused or neglected to take an appeal as provided for in this article shall forever be debarred from any further redress. [C. L. 1262.]

1761. Congressional sectional lines. In all townships in this state in which no public roads have been laid out or which have not been organized, the congressional section lines shall be considered public roads, to be opened to the width of two rods on each side of such section lines upon the order of the board of supervisors, without any survey being had except where it may be necessary on account of variations caused by natural obstacles, subject, however, to all the provisions of this article in relation to assessment of damages. [C. L. 1263.]

ROAD DUTIES OF TOWNSHIP SUPERVISORS.

1762. Care of roads. The supervisors in the several towns in this state shall have the care and superintendence of roads and bridges

therein, shall give directions for the repairing of the roads and bridges in their respective towns, regulate roads already laid out and alter each of them as they or a majority of them deem proper, as hereinafter provided; divide the respective towns into so many road districts as they deem convenient, by writing under their hands, to be lodged with the town clerk and by him entered in the town records; such division to be made annually if they deem it necessary, and in all cases to be made within at least twenty days before the annual town meeting; they shall assign to each of the said road districts such of the inhabitants liable to work on highways as they think proper, having regard to proximity of residence, and require the overseers of highways as often as they deem necessary to warn all persons liable to work on roads to come and work thereon, with such tools, carriages, cattle or teams as the said overseers or either of them shall direct. [C. L. 1264.]

1763. Report of labor. The supervisors in each town shall render to the annual town meeting an account in writing, stating the labor assessed and performed in such town, the sums received by them for fines and commutation, and all other moneys received under this article; a statement of the improvements necessary to be made on the roads and bridges, and an estimate of the probable expense of making such improvements beyond that of the labor to be assessed in that year, that the road tax will accomplish; also a statement in writing of all expenses and damages in consequence of laying out, altering or discontinuing roads. [C. L. 1265.]

DUTIES OF OVERSEERS OF HIGHWAYS.

1764. Duties. The overseers of highways in each town shall repair and keep in order the roads within their respective districts, warn all persons from whom labor is due to work on highways at such times and places within their several districts as they may think proper, collect all fines and commutation money, execute all lawful orders of the supervisors, and deliver to the town clerk within sixteen days after election or appointment, a list, subscribed by such overseer, of the names of all the inhabitants in his road district who are liable to work on the highways. [C. L. 1266.]

1765. When appointed. If any person chosen or appointed to the office of overseer of highways refuses to serve, or if his office becomes vacant, the supervisors of the town shall by warrant under their hands appoint some person in his stead, and the overseer so appointed shall have the same powers, be subject to the same orders, and liable to the same penalties as overseers chosen at town meetings. [C. L. 1267.]

1766. Notice of appointment. The supervisors making the appointment shall cause such warrant to be forthwith filed in the office of the

town clerk, who shall give notice to the person appointed as in other cases. [C. L. 1268.]

1767. Penalty for neglect. Every overseer of highways who refuses or neglects to perform any of the duties of this article, or which may be lawfully required of him by the supervisors of his town, shall for every such refusal or neglect forfeit the sum of ten dollars to be sued for by the chairman of the board of supervisors of the town, and when recovered to be applied by him in making and improving the roads and highways therein. [C. L. 1269.]

HIGHWAY LABOR AND ROAD TAX.

1768. Meeting. The supervisors of each town shall meet at the town clerk's office on the last Tuesday of March and afterwards at such other time and places as they think proper. [C. L. 1270.]

1769. Make estimate of labor. The town clerk shall deliver the list filed by the overseers to the supervisors, who shall proceed to ascertain, estimate and assess the highway labor and road tax to be performed and paid in their town the next ensuing year. [C. L. 1271.]

1770. Who liable to labor. Every male inhabitant being above twenty-one years and under the age of fifty, excepting paupers, idiots, lunatics and such others as are exempt by law, shall be assessed not less than one day nor more than four days in each year. Supervisors shall assess a road tax on all real estate and personal property liable to taxation of the town to any amount they may deem necessary not exceeding one dollar on each one hundred dollars of value as valued on the assessment roll of the preceding year. They shall affix the name of each person named in the list so furnished by the overseers, the number of days assessed to each person for highway labor, and also a description of each tract of land, and the name of the owner if known, with the valuation thereof as taken from the assessment roll of the previous year, and the amount of road tax assessed thereon in a separate column; the list so prepared shall be signed by the supervisors and deposited with the town clerk to be filed in his office. [C. L. 1272.]

1771. Highway tax. The supervisors shall also place on the land road list the names of all persons against whom road tax on personal property only has been assessed, and place in a separate column opposite the name of each person on the list the amount of road tax assessed on personal property, which amount shall be subject to collection or commutation by labor the same as land road tax assessed on real estate. [C. L. 1273.]

1772. Copy of list to overseers. The supervisors shall direct the town clerk to make a certified copy of each list, after which the town clerk

shall deliver the several copies to the respective overseers of highways of the several districts in which highway labor is assessed, for which he shall receive a fee of twenty-five cents for each copy so delivered. One copy for each overseer shall contain the name and number of days assessed to each person, the other the land and personal property road tax. [C. L. 1274.]

1773. Overseers to add names. The overseers of highways shall add the names of persons left out of such list and of new inhabitants, and they shall be rated in the same proportion to work on the highways as others are rated by the supervisors on such list. [C. L. 1275.]

1774. Three days' notice. Overseers of highways shall give at least three days' notice to all persons assessed to work on highways and living within the limits of their respective districts, of the time and places when and where they are to appear for that purpose and with what implements; but no person being a resident of the town shall be required to work on any highway other than in his own district in which he resides, but may elect to pay any land road tax in labor in the district in which said land is situated, and shall be allowed one dollar and fifty cents for himself and a like amount for the use of his team and wagon or plow; such labor shall be at the disposition of the overseers of their respective districts. [C. L. 1276.]

1775. Power of overseers in removing obstructions. Road overseers have power and it is hereby made their duty whenever any public highway becomes obstructed or unsafe from any cause whatever, to call upon any or all persons liable to poll tax in his district to come forth with such tools or teams as the overseer may direct, and work upon such highway in removing obstructions or repairing dangerous places, and for all such labor performed under the directions of the overseers by any person in excess of road tax assessed against him for the year the road overseer shall give a receipt stating the value of such labor, and said receipt shall be received in payment of any road tax due from any person to said district in that or any succeeding year; and any road overseer who fails to perform his duty as required by law shall be subject to prosecution therefor by the supervisors of this town, and upon conviction therefor shall be liable to a fine of not less than five nor more than fifty dollars, and justices of the peace shall have jurisdiction upon complaint made on oath to hear and determine all causes arising under this section. [C. L. 1277.]

1776. Commutation of road labor. Every person liable to work upon the highways shall work the whole number of days for which he is assessed, but every such person other than the overseer of highways

may elect to commute for the same or for some part thereof at the rate of one dollar and fifty cents per day, in which case such commutation money shall be paid to the overseer of highways of the district in which the person commuting shall reside, to be applied and expended by the overseer in the improvement of the roads and bridges of the same district. Overseers of highways when such land tax is paid either in money or labor shall write the word "paid" against such name or tract of land in their list on which the same is paid. [C. L. 1278.]

1777. Payment of commutation money. Every person intending to commute for his assessment or any part thereof shall within two days after he is notified to appear and work on the highways pay the commutation money for the work required of him by such notice, and the commutation shall not be considered as made until such money is paid. [C. L. 1279.]

1778. Power to require team or cart. Every overseer of highways has power to require a team or cart, wagon or plow with a pair of horses or oxen and a man to manage them, from any person having the same within his district. [C. L. 1280.]

1779. May procure substitute. Every person assessed to work on the highways and warned to work may appear in person or by an able-bodied man as a substitute, and the person or substitute so appearing shall actually work eight hours in each day, under a penalty of fifteen cents for every hour such person or substitute is in default, to be imposed as a fine on the person assessed. [C. L. 1281.]

1780. Fine for neglect to appear. Every person so assessed and duly notified, who does not commute and who refuses or neglects to appear as above provided, shall be fined for every day's refusal or neglect the sum of two dollars. If he was required to furnish a team, carriage or implements, and refused or neglected so to comply, he shall be fined as follows:

For wholly omitting to comply with such requisition, four dollars for each day.

For omitting to furnish a cart, wagon, or plow, one dollar for each day.

For omitting to furnish a pair of horses or oxen, one dollar and fifty cents for each day.

For omitting to furnish a man to manage the team, one dollar and fifty cents for each day. [C. L. 1282.]

1781. Overseer make complaint. Every overseer of highways, within nine days after any person so assessed and notified is guilty of any refusal or neglect for which a penalty or fine is prescribed in this ar-

ticle, unless satisfactory excuse is rendered to him for such refusal or neglect, shall make complaint to one of the justices of the peace of the town or an adjoining town. [C. L. 1283.]

1782. Duty of justice. The justice to whom such complaint is made shall forthwith issue a summons directed to any constable of the county, requiring him to summon such delinquent to appear forthwith before such justice at some place to be specified in the summons, to show cause why he should not be fined according to law for such refusal or neglect, which summons shall be served personally. [C. L. 1284.]

1783. Fine and warrant of levy. If upon the return of such summons no sufficient cause is shown to the contrary, the justice of the peace shall impose a fine as provided in this article for the offense complained of, and shall forthwith issue a warrant under his hand directed to any constable of the county in which such delinquent resides, commanding him to levy such fine with the cost of proceedings, of the goods and chattels of the delinquent, and no other property shall be exempt therefrom. [C. L. 1285.]

1784. Fine, how disposed of. The constable to whom such warrant is directed shall forthwith collect the moneys therein mentioned. He shall pay the fine when collected to the justice who issued the warrant, who is hereby required to pay the same to the overseer who entered complaint, to be by him expended in improving the roads and bridges in his district. [C. L. 1286.]

1785. Overseer cannot excuse any person. The acceptance by an overseer of any excuse for refusal or neglect shall not in any case exempt the person excused for commuting for or working the whole number of days for which he is assessed during the year. [C. L. 1287.]

1786. Per diem of overseer. [Ch. 34, '91.] Every overseer of highways is entitled to two dollars per day, to be paid out of the fines and commutation money for every day he is necessarily employed in the execution of his duties as overseer; provided, that at every town meeting, before the electors proceed to elect the overseers, they shall fix a limit of compensation for the overseers in their respective districts, and may, by resolution, reduce the pay per day when there are no funds from fines or commutations. The supervisors may pay the overseers out of any funds in their hands raised for the purpose of repairing and making roads and bridges. [C. L. 1288.]

1787. Return tax list. Every overseer of highways shall deliver to the town clerk of his town on or before the fifteenth day of September

in each year the list furnished by the supervisors containing the land and personal property road tax, with his certificate thereon that all taxes in said list oposite which the word "paid" is not written are due and unpaid according to the best of his knowledge and belief. [C. L. 1289.]

1788. Refusal to deliver tax list. If any overseer refuses or neglects to deliver such list with his certificate as provided in the last section, he shall for every offense forfeit the sum of five dollars and also the amount of tax remaining unpaid, to be recovered by the supervisors of such town and applied by them in improving roads and bridges of such town. [C. L. 1290.]

1789. Town clerk make out delinquent list. The town clerk of each of the several towns shall receive the lists returned by the overseers of highways pursuant to section twelve hundred and eighty-nine, and keep the same on file in his office, and shall make out and deliver to the auditor or county clerk of the county on or before the first day of October in each year a list containing a description of each tract or parcel of land on which the tax is delinquent, together with the name of the owner if known, and if unknown so state, and the amount of tax due and remaining unpaid on each, and containing all of the unpaid road taxes levied upon personal property according to the lists on file in his office, and shall make his certificate thereon to the effect that the same is a correct list of delinquent road taxes for the year therein stated, as appears from the several lists returned by the overseers of highways and on file in his office; and it is hereby made the duty of the county auditor or county clerk to extend such unpaid taxes upon the tax lists of the current year, to be collected in the same manner as other taxes. Such road tax when collected shall be paid to the town treasurer of the proper town upon the proper certificate of the auditor or county clerk of the county, and shall be applied by the supervisors of the town in the construction or repair of roads and bridges, to be paid by the town treasurer upon the order of the supervisors. [C. L. 1291.]

1790. Time for doing work. It shall be the duty of every overseer of highways to have at least three-fourths of the road labor assessed in his district worked out or actually expended on the highways previous to the first day of August in each year. [C. L. 1292.]

1791. Report. Every overseer of highways shall on the second Tuesday next preceding the time of holding the annual town meeting in his town within the year for which he is elected or appointed, render to one of the supervisors of the town an account in writing containing:

1. The names of all persons assessed to work on the highways in the district in which he is overseer.

2. The names of all those who have actually worked on the highway, with the number of days they have worked.

3. The names of all those who have been fined and the sums in which they have been fined.

4. The names of all those who have commuted and the manner in which the moneys arising from fines and commutations have been expended by him. [C. L. 1293.]

1792. Overseer to pay over money. Every such overseer shall then and there pay to the supervisors all moneys remaining in his hands unexpended, to be applied by the supervisors on the roads and bridges in the town. [C. L. 1294.]

1793. Penalty for refusal to render account. If any overseer refuses or neglects to render such account, or if having rendered the same he shall refuse or neglect to pay any balance which may be due from him, he shall for every such offense forfeit the sum of five dollars, to be recovered with the balance of the moneys remaining in his hands by the supervisors of the town and applied to the improvement of the roads and bridges in such town. [C. L. 1295.]

ALTERING, DISCONTINUING AND LAYING OUT ROADS.

1794. Petition for new road. The supervisors of the town may alter or discontinue any road or lay out any new road upon the petition of not less than six legal voters who own real estate or who occupy real estate under the homestead or pre-emption laws of the United States or under contract from the state of South Dakota, within one mile of the road to be altered, discontinued or laid out; said petition shall set forth in writing a description of the road and what part thereof is to be altered or discontinued, and, if for a new road, the names of the owners of the lands if known over which the road is to pass, the point at which it is to commence, its general course, and the point where it is to terminate; provided, that all roads or parts thereof heretofore or hereafter laid out by township supervisors and not opened to public use within ten years from the time they were laid out are hereby declared vacant. [C. L. 1296.]

1795. Copy of petition posted. Whenever any number of legal voters as aforesaid determine to petition the supervisors for the alteration or discontinuance of any road, or for laying out any new road, they shall cause a copy of their petition to be posted up in three of the most public places of the town twenty days before any action is had in relation thereto. [C. L. 1297.]

1796. Notice required. Whenever the supervisors receive a petition in compliance with the preceding sections for laying out, altering or

discontinuing any highway they shall within thirty days make out a notice and fix therein a time and place at which they will meet and decide upon such application, and the applicant shall at least ten days previous to that time cause such notice to be given to all occupants of the land through which such highway may pass, which notice shall be served personally or by a copy left at the abode of each occupant. The supervisors shall also cause copies of such notice to be posted in three public places in said town at least ten days previous to such meeting; every such notice shall specify as near as practicable the highway proposed to be laid out, altered or discontinued, and the several tracts of land through which the same may pass. [C. L. 1298.]

1797. Examination. The supervisors upon being satisfied that the notices required in the preceding section have been duly served, proof of which shall be shown by affidavit, shall proceed to examine personally such highway and shall hear any reasons for or against the laying out, altering or discontinuing the same, and shall decide upon the application as they deem proper. [C. L. 1299.]

1798. Proceeding, when road is laid out, changed or discontinued. Whenever the supervisors shall lay out, alter or discontinue any highway they shall cause a survey thereof to be made when necessary, and they shall make out an accurate description of the highway so altered, discontinued or laid out and incorporate the same in an order to be signed by them, and shall cause such order, together with all the petitions and affidavits of service of notices, to be filed in the office of the town clerk, who shall note the time of filing the same; but on the refusal of the supervisors to lay out, alter or discontinue such road they shall note the fact on the back of the petition and file the same as aforesaid. All orders, petitions and affidavits, together with the award of damages, shall be made out and filed within five days after the date of the order for laying out, altering or discontinuing such highway. But the town clerk shall not record such order within thirty days nor until a final decision is had, and not then unless such order is confirmed. And after such order is confirmed and such order, together with the award, has been recorded by such town clerk, the same shall be sent by him to the county auditor or county clerk, who shall file and preserve all such papers thus transmitted to him. And in case the supervisors shall fail to file such order within twenty days they shall be deemed to have decided against such application. [C. L. 1300.]

1799. Order or certified copy of record as evidence. The order laying out, altering or discontinuing any highway, or a copy of the record duly certified by the town clerk, shall be received in all courts as competent evidence of the facts therein contained, and shall be prima facie

evidence of the regularity of the proceedings prior to the making of such order, except in cases of appeal when such appeal has been taken within the time limited in this chapter. [C. L. 1301.]

1800. Damages, how ascertained. The damages sustained by reason of laying out, altering or discontinuing any road, may be ascertained by the agreement of the owners and supervisors, and unless such agreement is made or the owner shall in writing release all claim to damages, the same shall be assessed in the manner hereinafter prescribed before the same is opened, worked or used. Every agreement and release shall be filed in the town clerk's office and shall forever preclude such owners of lands from all further claim for damages. In case the supervisors and the owners of land claiming damages cannot agree, or if the owner of any land through which any highway shall be laid out, altered or discontinued is unknown, the supervisors shall in their award of damages specify the amount of damages awarded by them to all such owner or owners, giving a brief description of such parcel of land in their award; the supervisors shall assess the damages at what they deem just and right to each individual claimant with whom they cannot agree, and deposit a statement of the amount of damages so assessed to each individual with the town clerk, who shall note the time of filing the same. The supervisors in all cases of assessing damages shall estimate the advantages and benefits the new road or alteration of an old one will confer on the claimant for the same, as well as the disadvantages. Any person living on United States land who has made his declaratory statement for the same in the proper land office, shall for all the purposes of this act be considered the owner of such land. [C. L. 1302.]

1801. When damages not allowed. No damages shall be assessed or allowed under the provisions of this article to any person, persons or corporation, by the reason of laying out any new road or altering any old one, when the title of the land over which such road passes was vested in the state or the United States at the time of the location of such road, excepting as otherwise provided in this chapter. [C. L. 1303.]

1802. Determination final. The determination of the supervisors of any town in refusing to lay out, alter or discontinue any highway shall be final (unless such determination shall be appealed from as provided in this act) for the term of one year after the filing of such order or determination in the town clerk's office; and no application for laying out, altering or discontinuing any such highway shall again be acted upon by such within said term of one year, and in case the determination of the supervisors of any town in laying out, altering or discon-

tinuing any highway shall be appealed from as provided in this article, and such determination shall be reversed on such appeal, the said supervisors shall not within one year after the making of the determination reversed on such appeal act again upon an application to lay out, alter or discontinue any such highway. [C. L. 1304.]

1803. Notice to persons owning premises. Whenever the supervisors or commissioners have laid out any public road through any inclosed, cultivated or improved lands in conformity with the provisions of this article, and their decision has not been appealed from, they shall give the owner or occupant of the land through which the road is laid twenty days' notice in writing to remove his fences; if such owner does not remove his fences within twenty days the supervisors shall cause such fences to be removed and direct the road to be opened and worked; provided, that no inclosure shall be ordered open between the first day of April and the first day of October. [C. L. 1305.]

TOWN LINE ROADS.

1804. Location of road. Whenever the supervisors of any town receive a petition praying for the location of a new road or the altering or discontinuing of an old one on the line between two towns, such road shall be laid out, altered or discontinued by two or more of the supervisors of each of said towns, either on such line or as near thereto as the convenience of the ground will admit, and they may so vary the same to one side or the other of such line as they think proper. [C. L. 1306.]

1805. Road districts on town line roads. The supervisors when there may be such highways shall divide such highways into two or more road districts in such manner that the labor and expense of opening, working and keeping in repair such highways through each of said districts may be equal as near as may be, and shall allot an equal number of such districts to each of said towns. [C. L. 1307.]

1806. District — belongs where. Each district shall be considered as belonging wholly to the town to which it may be allotted for the purpose of opening the road and keeping it in repair; and the supervisors shall cause such highway and the petition and the allotment thereof to be recorded in the office of the town clerk in each of said towns. [C. L. 1308.]

1807. Roads already laid out. All roads heretofore laid out on the line between any two towns shall be divided, allotted, recorded and kept in repair in the manner above directed. [C. L. 1309.]

1808. Appeals. The decision of the supervisors in relation to town-line roads may be appealed from in the same manner as provided for in

this article for appeals from the decisions of supervisors in relation to town roads. [C. L. 1310.]

PUBLIC CARTWAYS.

1809. Width of road and cartways. All public roads to be laid out by the supervisors or county commissioners shall not be less than four rods wide, and may be six rods in width when all residents of land adjoining said road shall petition for the same; and when any road or portion thereof shall have been used and kept in repair and worked for twenty years continuously as a public highway the same shall be deemed as having been dedicated to the public, and be and remain until lawfully vacated a public highway whether the same has ever been laid out as a public highway or not. The supervisors of the several towns have power to lay out public cartways two rods wide when petitioned by five residents, freeholders of said town desiring the same. The cost of surveying and locating such cartways shall be paid by the town as provided by law in the laying out of public roads, and the damages to lands through or upon which cartways may be laid out shall be paid by the town. And the damages in this section mentioned shall be assessed and an appeal had in the same manner as in the case of other public roads, and the town clerk shall record any cartways so laid out in the same manner and with like effect as other roads are required to be recorded by him; provided, however, that when the petitioners or any of them propose in the petition their willingness to dedicate any land to which such petitioner has title for the purposes of such cartway, such lands shall be deemed as so dedicated and no damages shall be assessed therefor. Such cartway when so laid out and established shall be deemed a public cartway for public use. [C. L. 1311.]

1810. Labor on cartways. The town supervisors of this state of their respective towns may in their discretion allow any owner or owners of cartways duly and legally established or hereafter to be laid out by proper authority, to perform his or their highway labor and poll tax or either upon said cartway or cartways. And said supervisors in their discretion in all cases where any such carway exceeds one mile in length may expend upon such cartway any highway labor, poll tax, road tax, road or bridge money the same as upon any highway in said town. [C. L. 1312.]

ROADS IN CITIES.

1811. Powers of city authorities. The same powers and duties in and by this article conferred and imposed upon town supervisors are also conferred and imposed upon the city councils of the several cities through-

out this state, and in addition it shall be the duty of the city council to appoint some qualified elector of each road district in the city to be overseer of roads for such district, and the overseers of roads, city clerks, justices of the peace and the constables of the several cities of this state shall exercise the same powers and perform the same duties and be subject to the same liabilities as are in and by this article conferred and imposed upon the town overseers of roads, clerks, town justices of the peace and town constables, and all the provisions of this article shall be applicable to the several cities in this state unless otherwise provided for in their several charters, subject, however, to the reservation made in the succeeding section in regard to incorporated cities. [C. L. 1313.]

COUNTY ROADS.

1812. Proceedings. If twenty-four freeholders of any county containing one hundred or more legal voters; and twelve freeholders of any county containing less than one hundred legal voters, petition the board of commissioners of such county for the location, establishment, change or vacation of any highway running into more than one town of said county, and not within the limits of any incorporated city, whether such highway is connected or to be connected with other roads or not, setting forth in such petition the beginning, course and termination of the highway proposed to be located, established, changed or vacated, together with the names of the owners of the lands, if known, through which the same may pass, the auditor or county clerk of such county shall lay such petition before the board of county commissioners at their next session thereafter. [C. L. 1314.]

1813. Duty of county commissioners. When the board of county commissioners to whom such petition is presented are satisfied that at least thirty days' notice has been given before the session of said board at which such petition is to be heard, by posting up notices in three public places in each of the towns through which such highway is proposed to be located, changed or vacated, the board of commissioners shall appoint from the members thereof a committee to examine such proposed location, establishment, change or vacation, and the board if necessary shall designate a time when and a place where such committee will meet upon such route. [C. L. 1315.]

1814. Examination of proposed road. At the time and place designated such committee shall meet and proceed to examine the highway proposed to be located, changed or vacated, and in such examination may employ a competent surveyor. [C. L. 1316.]

1815. Report. After such committee have completed their examination they shall make a report of their proceedings, setting forth the

highway proposed to be located, established, changed or vacated, by course and distance, and recommending therein according to the opinion of the majority either that the prayers of the petitioners be granted or rejected, a copy of which report shall be returned to the board of commissioners at their next session thereafter. [C. L. 1317.]

1816. Duty of commissioners. At the next meeting of the board of commissioners they shall proceed to determine the prayer of such petition, and such board shall declare it granted if a majority of the board so agree, and shall direct the auditor or county clerk to notify the supervisors of the several towns in which such road is to be located or established, or change or vacation is made, when such supervisors will cause to be opened so much of such highway as lies in their respective towns; provided, that all damages sustained by reason of laying out or altering any county road shall be assessed by the county commissioners laying out such road, and paid by the county. [C. L. 1318.]

1817. Remonstrance — damages. If at the session of the board of commissioners at which the report of the road committee appointed to examine such highway is presented any person over whose land such road passes shall remonstrate against granting the prayer of the petition, setting forth in writing that he is damaged in a sum mentioned by the location, change or vacation of such highway, to the truth of which he takes and subscribes an oath, such board shall determine from the face of the report and the evidence before them the amount of damages sustained and whether the damages so assessed are greater than the utility of the proposed highway or change, and if they deem the road of sufficient advantage to the county to warrant the paying of the damages assessed by the board they shall declare such highway located, changed or vacated, and all damages declared assessed shall be paid by the county interested; but if they shall determine that the damages assessed are greater than the advantages of the proposed location or change they shall order the petition dismissed. [C. L. 1319.]

1818. County or state road defined. Every road located by state or county authority is a county road, and shall only be changed or vacated by an order of the county commissioners as provided for in this article. All damages claimed in the location of any state road through any of the organized counties of this state shall be determined by the provisions of this article the same as in the location of a county road, and the organized counties through which any state road is located shall be liable for such damages. [C. L. 1320.]

County is not liable in an action for damages caused by the neglect of officers to keep bridge in repair upon the public highway, unless such action is given by statute. Distinction given between such case and injury caused by city building. *Bailey v. Lawrence County*, 5 S. D. 393; 59 N. W. Rep. 219.

1819. Maximum road taxes. The county commissioners have general supervision of county roads, and have power to appropriate such sums of money from the county treasury as they think advisable, for opening, vacating, resurveying or otherwise improving such roads, not exceeding in any one year the sum or ratio of one thousand dollars to each five hundred thousand dollars of assessed valuation of real estate in such county; provided, that additional sums may be appropriated, but shall not be expended except upon ratification thereof by a vote of the people, to assist in building bridges and opening and repairing county roads, to be expended under their direction; provided, further, that the towns through which any county road may pass shall keep such road in repair the same as other roads in their towns. [C. L. 1321.]

1820. Side roads and ford crossings. The board of county commissioners of each county in this state shall have power and authority to lay out and establish side roads and ford crossings near or adjacent to any bridge forming part of any county or town road over any stream of water in their county; said side road on each side of said stream of water to intersect with the adjacent road at the nearest practicable point. In the laying out and establishing such side road and ford crossings the same proceeding shall be had in all respects, including the assessment and payment of damages, as are required by law in laying out and establishing county roads; provided, that this act shall not authorize the laying out and establishing side roads or ford crossings near or adjacent to any bridge the cost of which was less than one thousand dollars. [C. L. 1322.]

1821. Damages for old roads. The county commissioners in cases of county roads, and the town supervisors in cases of town roads, may assess and allow damages on application in cases where roads have been previously laid out and no damages have been assessed or allowed or release given, if they consider such assessment just and right; provided, however, that no damages shall be allowed or paid unless application for such damages shall have been made within three years from the date of the laying of such roads. [C. L. 1323.]

BRIDGES.

1822. Petition — duty of board of county commissioners. [Ch. 33, '91.] § 1. Whenever a majority of the freeholders of a civil township, or a majority of freeholders living within a radius of three miles of the proposed location shall petition the board of county commissioners for a bridge at a specified location within said township or town-

ships, when the cost of said bridge will exceed the sum of one hundred dollars, it shall be the duty of the board of county commissioners to view the location and investigate the necessity of the said proposed bridge, and if the county board approve its location and building, said county board of commissioners shall then proceed to advertise in the official paper of the county for a period of thirty days, asking for sealed bids for the building of said bridge to be submitted to them at their next regular or special meeting, at which meeting of the board the county commissioners shall proceed to examine all sealed proposals or bids for the building of said bridge, and shall award the building of said bridge to the lowest responsible bidder, requiring the bidder to give a good and sufficient bond, in a sum not less than the amount stipulated in the bid or contract, for the faithful building of any bridge according to the plans and specifications, said bond to be approved by the board of county commissioners, and filed in the office of the county auditor; provided, that said commissioners may reject any and all bids.

1823. Expense, how paid. [Ch. 33, '91.] § 2. The cost and expense of the construction of said bridge shall be paid out of the county bridge fund upon the warrant of the chairman of the board of county commissioners, if said bridge is accepted and approved by said board.

1824. Township board to have supervision. [Ch. 33, '91.] § 3. After any bridge built by the county under the provisions of this act, said bridge shall be under the supervision of the township board, and all repairs not exceeding twenty-five dollars shall be done by the township, or townships in which said bridge is located, and all repairs exceeding twenty-five dollars and less than one hundred dollars, shall be divided equally between the county and the township, or townships. All repairs exceeding one hundred dollars shall be paid by the county.

ROAD APPEALS.

1825. Appeal from award of damages. Any person who shall feel himself aggrieved by any determination or award of damages made by the supervisors of any town or towns, or by the commissioners of any county, either in laying out, altering or discontinuing, or in refusing to lay out, alter or discontinue any highway or cartway, may within thirty days after the filing of such determination or award of damages as provided in this act appeal therefrom to a justice of the peace of the county for a jury to hear and determine such appeal; provided, the amount of damages allowed in such appeal does not exceed one hundred dollars. [C. L. 1324.]

The word "allowed" should be "claimed." *Town of Dell Rapids v. Irving*, 68 N. W. Rep. 313.

1826. Bond — viewing road. Every application to a justice of the peace for an appeal shall be in writing and shall briefly state the grounds on which it is made, and whether it is brought in relation to damages assessed or in relation to laying out, altering or discontinuing, or refusal to lay out, alter or discontinue any highway, or whether it is brought to reverse entirely the decisions of the supervisors or commissioners or any part thereof — if the latter, what part. Upon the filing such application and a bond executed to the supervisors of the town or the commissioners of the county, with sufficient sureties to be approved by the justice, conditioned to pay all costs arising from such appeal, provided that the determination of the supervisors or the county commissioners (as the case may be) shall be sustained, such justice shall issue a summons specifying therein a time and place for the hearing of such appeal, which summons shall be served on one or more of the supervisors (or commissioners, if a county road) at least six days before such time, and at the time and place so appointed the justice shall proceed as in other cases of trial by jury. If upon the trial it is deemed necessary by the jury or either party in the action that a personal examination by the jury of the road in controversy is necessary, the justice may on motion of the jury or either party in the action direct the jury to view and examine the highway described in the application, and consider the determination of the supervisors or commissioners in laying out, altering or discontinuing, or refusing to lay out, alter or discontinue the same, and to make return to him in writing within ten days. [C. L. 1825.]

1827. Return to be filed — costs. The justice shall file the return of the jury in the office of the town clerk if the appeal was taken from the decision of the board of supervisors of the town, and in the office of the county auditor if the appeal was taken from the decision of the county commissioners; and if the determination of the supervisors or commissioners shall be affirmed by the jury the party appealing shall pay all costs, but if such determination shall be reversed or altered, or a greater amount of damages awarded, then the costs in the case shall be a charge against the town or county as the case may be. [C. L. 1826.]

1828. Appeal to circuit court. In case the amount of damages claimed exceed one hundred dollars, appeal may be taken within thirty days to the circuit court of the county in which said damages are sustained, by filing in the office of the clerk of such court a bond to be approved by the judge of such circuit court, or the court commissioner, or the county auditor of the county, of the same nature as provided in the two preceding sections, and by the service of a written or printed notice of such appeal upon the chairman of the board of supervisors

or county commissioners as the case may be, signed by the party making the appeal or his attorney. Such appeal shall bring before the appellate court the propriety of the amount of damages and all matters referred to in such notice of appeal. Unless the parties otherwise agree, the matter shall be submitted to a jury and tried as other appeal cases are tried, and the court or jury as the case may be shall reassess the damages aforesaid, and make the verdict conform to the justice and facts in the case; but the rule for ascertaining and fixing such judgment shall be based upon the same principles as the supervisors or commissioners were required to adopt in originally determining the same; and upon judgment being rendered the clerk of said court shall serve a certified transcript of such judgment upon the chairman on whom the notice of appeal was served as aforesaid. If the determination of the board of supervisors or commissioners appealed from be affirmed, or if the amount of damages allowed be reduced in said circuit court, the party appealing shall pay all costs and disbursements incurred in said court; but if the amount of damages allowed be increased, or if such determination shall be altered, modified or reversed in said circuit court otherwise than as to the amount of damages, said costs and disbursements shall be paid by the town or county as the case may be; said costs and disbursements to be taxed and adjusted as in other cases in said circuit court, and judgment entered therefor in like manner. [C. L. 1327.]

1829. Appeal sustained — duty of commissioners. When an appeal shall have been made from the determination of any board of supervisors or county commissioners, and such determination shall have been reversed or altered, the supervisors or commissioners from whose determination such appeal was taken shall proceed to lay out, alter or discontinue such highway in conformity with the decision of such appeal, and the proceedings thereon shall be the same as if they had originally so determined to lay out, alter or discontinue such highway. The amount of damages finally determined and awarded, whether by the supervisors or by the court and jury, together with all the charges of officers and other persons necessarily employed in laying out, altering or discontinuing any town road, shall be audited by the supervisors, specifying the amount of damages and charges due each individual, and the respective amounts shall be certified to by the said supervisors and by them deposited with the town clerk and paid by the town. Before any road shall be opened or used an amount of town orders equal to the damages assessed to each individual shall be duly issued and deposited with said town clerk for the use and benefit of said individual, and shall be delivered to him upon demand. The issuing and depositing of said orders shall be deemed to be sufficient security for the pay-

ment of said damages. In no case shall a town be compelled to pay any damages that may be awarded in laying out and altering or discontinuing any county road. [C. L. 1328.]

OBSTRUCTING HIGHWAYS.

1830. Penalty. Whoever at any time obstructs any of the public highways in this state in any manner with intent to prevent the free use thereof by the public, or whoever shall do or cause to be done any planting or plowing thereon within the width of one full rod on each side of the center line of said highway, shall be subject to a fine of not less than five nor more than twenty-five dollars, together with the costs attending such conviction, and on failure to pay such fine and cost may be committed to the county jail, there to remain until such fine and costs are paid or until discharged according to law; and it is hereby made the duty of the board of supervisors of the several towns in this state to make complaint and prosecute in their official capacity all violations of the provisions of this section. [C. L. 1329.]

1831. Jurisdiction of justice. Justices of the peace shall have jurisdiction on complaint made on oath to hear and determine all cases arising under the preceding section. [C. L. 1330.]

1832. Fines, how disposed of. All fines recovered under the provisions of this article shall be paid into the treasury of the town wherein the offense was committed, to be used in repairing the public highways within such towns. [C. L. 1331.]

WATERING PLACES ON HIGHWAYS.

1833. Water troughs — bounty. Any person in any city, town or township in this state who shall construct and maintain and keep in repair a watering trough beside the highway, which shall be above the ground and made easily accessible for horses and carriages, shall be allowed by the city, town or township five dollars out of his highway tax for each year during which he shall furnish the same. [C. L. 1332.]

1834. Well or spring — bounty. Any person in any city, town or township who shall construct and maintain and keep in repair a good well or spring beside the highway, and easily accessible, and provided with a suitable pail or bucket, and keep the same so supplied and in good repair, shall be allowed by the city, town or township three dollars out of his highway tax for each year during which he shall furnish the same. [C. L. 1333.]

1835. Proceedings to furnish watering places. Any person upon any highway or road in any district or ward wishing to furnish such

watering trough, well or spring shall make application to the aldermen of the city or supervisors of the town, who shall decide where such trough, well or spring shall be located, and the number that shall receive the benefits of this act. [C. L. 1334.]

DITCHES FOR DRAINING HIGHWAYS.

1836. Proceedings for draining and ditching. Whenever any overseer of highways shall file with the chairman of the board of supervisors of the town in which his road district is located his affidavit stating that a certain road passing through or into the district of which he is overseer, runs into or through swamp, bog or meadow or other low land, and that it is necessary or expedient that a ditch or ditches should be opened through land belonging to any person, stating the probable length of such ditch or ditches and the width and depth of the same as near as possible, the point at which it is to commence, its general course, and the point near which it is to terminate, and the names of persons owning the land if known, and a description of the land over which said ditch or ditches must pass, and that the road at that point cannot be made passable without extraordinary expense unless such ditch or ditches are laid out and opened; thereupon it shall be the duty of the chairman of the board of supervisors immediately to make out a notice and fix therein a time not less than six nor more than sixty days from the date thereof when the board of supervisors will meet at the place described in said affidavit and personally examine the premises; which notice, together with the affidavit, he shall cause to be filed in the office of the town clerk, and the clerk shall make true copies of said notice and deliver them to the overseer of highways making the affidavit, whose duty it shall be to personally serve the same upon each of the owners of the land if residents of the county, or upon the occupants of the land if the owners are residents of the county through which it is proposed to open such ditch or ditches, which notice may be in the following form:

State of South Dakota, county of..... Mr..... Notice is hereby given that whereas it appears by the affidavit of overseer of road district No..... in the town of that the road running from to runs into or passes through a swamp, bog, pond or low land, which swamp, bog, pond or low land is situated on section in said town, and that it is the opinion of said overseer that a ditch or ditches should be opened through land belonging to..... for the purpose of draining said swamp; therefore, you are hereby notified that the board of town supervisors will on the day of A. D. 18.., personally examine the premises over which said ditch or ditches are to pass, and to decide upon said application, and will also hear any objections which may be made in the matter, and will consider the amount of damages which in their opinion will be just compensation to the owners of land in consequence of the opening of such ditch or ditches.
Signed..... chairman of the board of supervisors.
....., clerk of town of.....

Provided, that such ditch or ditches shall be laid out upon the lines that the owner or owners of the land over which they are to pass may desire whenever it can so be done without extra cost. [C. L. 1335.]

1837. Notices — publication. The overseer serving such notice shall make return thereon to the town clerk, stating the facts, and if it shall appear from the returns of the overseer that the owners of said lands do not reside in the county and that no occupant resides thereon, the town clerk shall order the publication of the notice for three successive weeks in a newspaper printed and published in said county, or if there be no paper printed and published in said county, then he shall post or cause to be posted up the notice in three of the most public places in the county for three weeks prior to the meeting of the supervisors, and such publication shall be considered as sufficient notice to all parties. [C. L. 1336.]

1838. Supervisors to make examination. At the time specified in the notice the supervisors shall proceed to examine the road and premises over which such ditch must pass, and hear any reasons for or against laying out the same, and shall decide upon the application as they deem proper, and shall assess the amount of damages which in their judgment will be an equitable compensation to the owners of the land for the opening of said ditch or ditches through their land, and in all cases they shall estimate the advantage and benefits the laying out and opening of such ditch or ditches will confer upon the owner of any land through which such ditch may run, as well as the disadvantages; provided, the damages sustained by reason of laying out and opening such ditch or ditches may be ascertained by the agreement of the owners and the supervisors, in which case every agreement and release shall be in writing and filed in the town clerk's office and shall forever preclude such owners of lands from all further claims for damages. If after taking all the circumstances into consideration the supervisors shall be satisfied that the opening of such ditch or ditches is necessary or advantageous to the public interest they shall cause the same to be laid out and opened, and shall give such directions in the matter as shall be necessary for the effectual draining of said swamp, pond, bog or low land, and shall file a statement in writing of all their doings, including the amount of damages allowed, in the office of the town clerk, who shall copy the same into a book to be kept by him especially for that purpose; and if the order and proceedings be not appealed from within ten days from the filing thereof as hereafter provided for then said judgment, order and findings shall be final, and the overseer may proceed to open the ditch or ditches in accordance with the directions and under the instructions of the said board of supervisors. [C. L. 1337.]

1839. Appeals. Any party through whose land said ditch shall pass may appeal from the decision of the supervisors to the circuit court of the county in which the premises are situated, by filing with the town clerk within ten days after the decision of the supervisors shall have been made and filed a recognizance of the appellant with sureties to be approved by the said board or chairman in a sum not less than one hundred dollars, conditioned that the appellant will appear at the next term of the circuit court and prosecute his suit to final judgment if the court shall not otherwise order for good cause; and further that he will abide the decision of the court and pay all costs and damages that may be assessed against him therein; or if the appeal shall be dismissed or discontinued, that he will pay the costs of appeal. The proceedings of the circuit court in the appeal shall be the same as on appeal in civil action from a justice of the peace as nearly as practicable, and costs shall be awarded for or against either party in the same manner as upon an appeal in civil actions. [C. L. 1338.]

1840. Keeping drains in repair. At any time after such ditch or ditches shall have been opened it shall be lawful for the overseer of highways of the road district from time to time as it may become necessary, to enter upon the lands through which such ditch or ditches have been opened, for the purposes of clearing out and scouring the same, and then and there to clear and scour the same in such manner as to keep them open and in good order and condition. [C. L. 1339.]

1841. Penalty for injuring ditch. Any person who shall dam up, obstruct or in any way injure any ditch or ditches as opened shall be liable to pay to the overseer of highways of such road district double the damages which shall be assessed by the jury or court trying the case for such injury, and shall further be deemed to have committed a misdemeanor, and shall upon conviction thereof be punished by imprisonment of not more than three months, or by fine of not more than one hundred dollars, and such sums of damages and fines shall be by such overseer expended on the roads in his district. [C. L. 1340.]

1842. Payment of damages. When the amount of damages or compensation to be paid to any one or more of the owners of land taken for such ditch or ditches shall have been finally determined by proceedings under the provisions of this act, the board of town supervisors shall provide for the payment of and pay the same in the manner provided by law for the payment of like damages or compensation for land taken for a public highway, and may in their discretion deduct the amount so paid from money belonging to or to be paid over to the road district in which such ditch or ditches shall have been constructed. [C. L. 1341.]

SEEDING DOWN HIGHWAYS.

1843. Who may seed. Any person living upon or owning land fronting on any of the public highways of this state may, for the purpose of seeding the same down to grass, plow and level the said highways for said purpose and seed the same to grass to within eight feet of the center of the same; provided, that nothing herein contained shall be construed to authorize the said parties to work upon the same to the hindrance or detriment of the travel upon said roads or to authorize any compensation for the same. [C. L. 1342.]

ROADS ON LINE OF CITY OR VILLAGE.

1844. Duty of supervisors. Whenever the supervisors of any town and the trustees or common council of any incorporated city or village shall receive a petition praying for the location of a road or for the altering or discontinuing of any road on the line between such town and incorporated city or village, such road shall be laid out, altered or discontinued by two or more of the supervisors of such town and a majority of the common council or trustees of such incorporated city or village. [C. L. 1343.]

1845. Appeals. The decision of such supervisors and common council or trustees in relation to such road may be appealed from in the manner as provided in the laws of this state for appeals from the decisions of supervisors in relation to town roads. [C. L. 1344.]

1846. Laws applicable. The laws of this state which apply to a road on the line between two towns shall be applicable to all roads on the line between any town and an incorporated city or village. [C. L. 1345.]

RECORDING STATE AND COUNTY ROADS.

1847. Field notes furnished. Upon the written request of the board of supervisors of any township in this state, the county auditor of the county wherein such township is situated shall furnish a copy of the description and field notes and plat (if any) of each state and county road running into or through such township, as appears by the description, field notes and plat on file or of record in his office. [C. L. 1346.]

1848. Record of field notes. Upon the filing of such copy in the town clerk's office the town clerk shall record the same in the road record book of the township, and such record shall be prima facie evidence of the existence of such road according to the description and plat so on file. [C. L. 1347.]

1849. Act takes effect. Townships organized and acting under present laws shall be wholly subject to the provisions of this act. [C. L. 1348.]

CORNERS AND MONUMENTS

1850. Duty of road overseer to examine corners or monuments. [Ch. 143, '93.] § 1. Before any road overseer in any county or township in this state shall begin to grade or otherwise repair any public highway lying wholly or in part in his district, such highway being located upon a standard township or section line or any subdivisional line thereof; it shall be his duty to examine the corners or monuments along the line of such highway and over which the part to be graded or otherwise repaired may extend.

1851. Shall preserve certain corners. [Ch. 143, '93.] § 2. He shall ascertain from the county surveyor what corners along the line of such highway have been established by a county surveyor and are on record. Such corners, together with all corners or monuments which bear unquestioned evidence of having been established by a government surveyor, and over which the part of such highway to be graded or otherwise repaired extends shall be preserved by the road overseer as follows:

1852. Corners established, how. [Ch. 143, '93.] § 3. In all corners or monuments mentioned in section two of this act in which there are no rocks nor other imperishable substance, he shall plant a rock containing not less than three hundred cubic inches or an equal amount of a good quality of brick. He shall also plant rocks or brick of the dimensions and amount hereinbefore named, northeast and southwest of said corners or monuments at a distance of forty-six feet from said corners or monuments and on line with the same.

1853. Witnesses. [Ch. 143, '93.] § 4. The preserving of such corners or monuments in the manner above described shall be done in the presence of two witnesses.

1854. Descriptions filed with county surveyor. [Ch. 143, '93.] § 5. An accurate description of each and every corner or monument preserved and witnessed in the manner herein prescribed and signed by the road overseer and two witnesses, shall be forwarded to the county surveyor within fifteen days after the work has been performed. Said description shall be filed in the county surveyor's office.

1855. Penalty. [Ch. 143, '93.] § 6. Any road overseer failing to comply with the provisions of this act shall be deemed guilty of a mis-

demeanor, and, upon conviction thereof, shall be punished by being fined not less than ten dollars nor more than fifty dollars for each and every corner he fails to preserve.

ARTICLE 3. LAW OF THE ROAD.

DUTIES OF PERSONS USING THE PUBLIC HIGHWAY.

1856. Vehicles turn to the right. Whenever any persons shall meet each other on any bridge or road, traveling with carriages, wagons, sleds, sleighs or other vehicle, each shall pass to the right of the middle of the traveled part of such bridge or road, so that the respective carriages or other vehicles aforesaid may pass each other without interference. [C. L. 1349.]

1857. Penalty for violation. Every person offending against the provisions of the preceding section shall for each offense forfeit a sum not exceeding twenty dollars, and shall also be liable to the party injured for all damages sustained by reason of such offense. [C. L. 1350.]

1858. Drunken drivers. No person owning or having the direction or control of any coach or other vehicle running or traveling upon any road in this state for the conveyance of passengers shall employ or continue in employment any person to drive such coach or other vehicle who is addicted to drunkenness or to the excessive use of intoxicating liquors; and if any such person shall violate the provisions of this section he shall forfeit a sum not less than ten and not exceeding fifty dollars, and shall be liable for all damages sustained. [C. L. 1351.]

1859. Hitching passenger teams. It shall not be lawful for the driver of any carriage or other vehicle used for the conveyance of passengers to leave the horses attached thereto while any passenger remains in or upon the same, without making such horses fast with a sufficient halter, rope or chain, or without some suitable person to take the charge or guidance of them so as to prevent their running; and if any such driver shall violate the provisions of this section he and his employer or employers jointly and severally shall forfeit a sum not exceeding twenty dollars; but no prosecution shall be commenced therefor after the expiration of three months from the time of committing the offense. [C. L. 1352.]

1860. Passenger conveyance — liability of owner. The owners of every carriage or other vehicle running or traveling upon any road or public highway for the conveyance of passengers for hire shall be liable jointly and severally to the party injured, in all cases, for all damages done by any person in the employment of such owners as a driver while

driving such carriage, to any person or to the property of any person, whether the act occasioning such injury or damage be wilful, negligent or otherwise, in the same manner as such driver would be liable. [C. L. 1353.]

PENALTIES.

1861. Notices on bridges. It shall be the duty of the county commissioners of each and every county in this state to cause notices to be posted at both ends of all bridges in their respective counties, where the span of such bridge shall be fifty feet or more, stating the number of cattle, horses or other animals that may be driven on to or across said bridge at any one time. [C. L. 1354.]

1862. Driving cattle. Any person or persons driving or having charge of any drove of cattle, horses or other animals, who shall drive or permit more of said animals to enter upon or cross said bridge at one time than is specified in said notices provided for in section thirteen hundred and fifty-four, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court having jurisdiction shall be fined in any sum not exceeding one hundred dollars nor less than ten dollars. [C. L. 1355.]

1863. Penalty for fast driving. Whoever drives or rides upon any bridges belonging to any incorporated bridge company, or upon any bridge which has been or may be erected by any county or town, or upon any bridge which has been or may be erected by any individual, and upon which the notice hereinafter prescribed is conspicuously displayed, faster than a walk, shall forfeit and pay for the use and benefit of the county wherein such bridge is located in whole or in part, as a penalty therefor, the sum of not less than five nor more than ten dollars for each and every such offense. [C. L. 1356.]

1864. Proceedings on complaint. Upon complaint made to any justice of the peace in any county where such bridge is located in whole or in part, that any such offense has been committed, the said justice shall issue his warrant reciting the substance of the complaint, requiring the officer to whom it is directed forthwith to arrest the accused and bring him before such justice or some other justice of the same county, to be dealt with according to law. If the name of the person committing the offense is not known to the complainant or the justice, the complainant may give the justice such description as may enable the person accused to be identified, and the warrant shall recite such description and shall justify the officer to whom it is directed in arresting the person described and bringing him before the justice. [C. L. 1357.]

1865. Judgment on conviction. In all cases of conviction under the provisions aforesaid the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution upon the judgment to the use of the county. [C. L. 1358.]

1866. Fine imposed, when. No fine shall be imposed under the provisions aforesaid unless there was at each end of said bridge at the time when such offense was committed, a conspicuous signboard upon which was printed the following words and figures: "Ten dollars fine for riding or driving on this bridge faster than a walk." [C. L. 1359.]

1867. Penalty for running toll-gate. When any bridge or ferry company or individual is authorized by law to collect toll for the crossing of any bridge or ferry belonging to such company or individual, any person who wilfully runs the toll-gate of such company or individual and passes over such bridge or ferry with the intention of avoiding the payment of the toll prescribed by law, or who refuses to pay such toll when thereto lawfully requested, shall forfeit and pay for the use and benefit of the county wherein such bridge or ferry is located a fine of five dollars for each and every such offense, which fine shall be prosecuted and collected, together with the costs, in the same manner as the penalties prescribed in the preceding section. [C. L. 1360.]

GUARDS FOR OBSTRUCTED ROADS.

1867a. Guards, where and how to be constructed. [Ch. 131, '90.] § 1. Any person who shall place a barbed wire fence across any wagon road which has been traveled either as a private or public thoroughfare in this state, shall, on the same day that any part of said fence was so placed, build an obstruction across said road on the outside of and not farther away from said fence than two rods, consisting of two boards or poles securely fastened to three upright posts.

1867b. Penalty for violation. [Ch. 131, '90.] § 2. Any person convicted of a violation of any of the provisions of this act shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than ten nor more than fifty dollars.

1867c. Liability for damages sustained. [Ch. 131, '90.] § 3. Any person violating any of the provisions of this act shall be liable in damages for injury sustained thereby either in person or property, to be recovered in a civil action in any court of competent jurisdiction.

ARTICLE 4. FERRIES.

1868. Lease — distance apart. It shall be unlawful for any person to establish, maintain or run upon any waters within the state any ferry upon which to convey, carry or transport any persons or property for hire or reward, without first having obtained a license therefor as here-

inafter provided; and where but one bank or shore is in this state the board of commissioners for the proper county have the same authority, and this law applies with like effect, as if the entire stream were within this state, so far as the banks and waters actually within it are concerned. And when any ferry lease has been granted no other lease shall be granted within a distance of two miles thereof across the same stream. Any person violating any of the provisions of this section shall for each offense forfeit and pay to the proper county not less than five dollars nor more than one hundred dollars, with costs, to be recovered in an action in the name of the state. [C. L. 1361.]

1869. County board grant lease. [Ch. 88, '90.] The board of county commissioners of the county to whom application shall be made for a ferry in the manner hereinafter provided, are hereby authorized and it shall be their duty to grant a lease of such ferry for a term not exceeding fifteen years, to such person or persons who shall bid and secure the payment of the highest amount of rent for the same, such lease to be executed by the said board of county commissioners as lessors and such highest bidder or bidders as lessees; and the county commissioners of any county in this state that have leased to any person or persons the ferry across any stream or streams in this state shall be empowered to extend to such person or persons the lease so granted, to any person or persons putting in a steam ferry, at the same rate as previously paid; provided, that such extended time shall not exceed fifteen years from the time of the granting of the first lease, and that when in the opinion of the county commissioners of the county wherein such lease is granted the rates fixed by law for crossing such ferry be too high, or if no rate be fixed, they shall have the right to fix the rates as in their judgment may seem just. [C. L. 1362.]

Declared valid and not in conflict with section 1889, R. S. U. S. *Evans v. Hughes County*, 6 Dak. 102; 50 N. W. Rep. 720.

Board of county commissioners in granting ferry lease, act as agents of the state and not of the county. *Evans v. Hughes County*, 3 S. D. 580; 54 N. W. Rep. 603.

Granting ferry lease does not impose upon the county any liability to refund money received under an invalid law. *Id.*

Ferry Law held valid and constitutional. Lease is not affected by the fact that one end of reservation was within Indian reservation. *Nixon et al. v. Reed et al.*, 8 S. D. 580; 54 N. W. Rep. 603.

Assignment of lease with consent of county commissioners is valid. *Id.*

1870. Rates. The rates for crossing the Missouri river on ferries shall not exceed the following, to-wit:

For two horses, mules or oxen and wagon, with or without load, one dollar.

For each additional pair of horses, mules or oxen, thirty cents.

For each two horses or mules and buggy, seventy-five cents.

For each one horse or mule with buggy and driver, fifty cents.

For each led horse or mule, twenty-five cents.

For loose cattle per head, fifteen cents.

For sheep and swine per head, ten cents.

For each one hundred pounds of freight or merchandise unloaded, ten cents.

For each thousand feet of lumber unloaded, one dollar.

The rates for ferriage across the Big Sioux river, the Vermillion river and the Dakota river shall not exceed the following, to wit:

For foot passengers, each, ten cents.

For each horse or mule with or without a rider, ten cents.

For each head of loose cattle, five cents.

For two horses or mules or cattle team, loaded or without load, with driver, twenty-five cents.

For each horse or mule or ox over two, attached to a team, five cents.

For a single horse or mule to a buggy, fifteen cents.

For each head of sheep or swine, five cents.

All freight not attached to teams, five cents per one hundred pounds.

All lumber in pile, fifty cents per thousand feet.

Said ferryman is required to keep a schedule of his legal rates posted up in a convenient place at or near said ferry, in easy view of the passing public. [C. L. 1363.]

1871. Ferries in unorganized counties. The secretary of the state is hereby authorized when application is made to him to grant a lease of any ferry in any unorganized county or counties, or in any other unorganized country within and under the jurisdiction of the state, for the like period and under the provisions of this chapter in every respect which are applicable thereto. The money received therefor shall be by him paid into the state treasury; provided, that all licenses granted by the secretary under this section shall terminate upon the organization of the county in which the same or any part thereof lies, and it shall thereafter be subject to the general law as herein provided. [C. L. 1364.]

1872. Safety of ferries. Every person obtaining a lease to keep a ferry as aforesaid shall provide and keep in good repair a good and sufficient boat for the safe conveyance of persons or property, and when the river or creek over which the ferry is kept is passable shall, with a sufficient number of hands to work and manage the boat, from sunrise till sunset, and with reasonable care and promptness, convey across said ferry all persons and property presented for transportation across the same. And if any lessee as aforesaid shall fail or neglect to perform all or any of the duties enjoined upon him by this act, or shall demand or receive a higher rate of ferriage than shall be allowed by section thirteen hundred and sixty-three, the lessee so offending shall for each offense forfeit and pay the sum of ten dollars, to be recovered in the name of the state of South Dakota before any justice of the peace of the proper county. [C. L. 1365.]

1873. Penalty for unlawful ferry. If any person shall keep a ferry in any of the organized counties of this state, without a lease first ob-

tained from the board of county commissioners as aforesaid, the owner or person so offending shall forfeit and pay a sum of not less than fifty dollars and not exceeding five hundred dollars for each year or fractional part of a year such person shall keep such ferry, to be recovered in a civil action in the name of the state of South Dakota. [C. L. 1366.]

[For further penalties regarding maintenance of unlawful ferries, see C. L. 6662.]

1874. Ferry lease — school fund. All moneys which may be received by the board of county commissioners upon leases granted for ferries as aforesaid shall, within thirty days after the receipt thereof, be paid to the county treasurer for the use of the public schools of the county, and the same shall be apportioned among the several districts of the county in like manner as other school funds are now by law apportioned. [C. L. 1367.]

1875. Temporary ferries. Nothing in this chapter shall prevent any person from ferrying persons and property across any small stream in time of high water, when in the opinion of the board such stream is too small to justify a regular ferry. [C. L. 1368.]

1876. Foreiture for failure to maintain ferry. Any and all persons who have heretofore received either permit, lease, grant or charter in any form, either from the legislative assembly or any tribunal or board, for the keeping of a ferry or ferries of any kind, who shall neglect or fail during the period of one month at any one time after the passage of this or any prior act, to keep his or their respective ferry or ferries in operation for the safe transportation of persons and property over the same according to law, shall forfeit all the ferry rights, franchises and privileges, and all right, title or claim to the same, granted by or under this law or any former act as aforesaid; and upon due proof made before the board of county commissioners of the proper county, of such failure or neglect as aforesaid, the said board are empowered and authorized to declare such forfeiture absolute, and thereupon and thereafter all the rights, franchises and privileges granted by or under this law or any previous law as aforesaid, shall cease and be of no force or effect in law or equity. [C. L. 1369.]

CHAPTER 13. OFFICES AND OFFICERS.

ARTICLE 1. QUALIFICATION FOR OFFICE.

1877. Civil officers to qualify. Except as otherwise specially provided, all civil officers shall qualify substantially in manner and form as herein set forth. [C. L. 1370.]

1878. Official bonds. All civil officers elected by the people, or appointed by the governor or legislative assembly, or by any other authority provided by law, except the superintendent of public instruction, stenographers, county commissioners, county surveyors, county clerk, the officers of the council and house of the legislative assembly, but including township treasurers, clerks, justices of the peace and constables, shall before entering upon duty give bond conditioned that they will faithfully and impartially discharge the duties of their office (naming it fully), and render a true account of all moneys, credits, accounts and property of any kind that shall come into their hands as such officer, and pay over and deliver the same according to law. [C. L. 1371.]

An official bond not executed by the principal is *prima facie* an invalid instrument and not binding upon the principal. Board of E. Rapid City v Sweeney et al., 1 S. D. 642; 48 N. W. Rep. 302.

Obligors on a bond conditioned on the repayment by the bank of county funds deposited by county treasurer are liable for certificate of deposit given the treasurer before the execution of the bond. Allibone v. Ames, 68 N. W. Rep. 165.

1879. Oath, where placed. Every civil officer who is required to give bond shall take and subscribe on the back of his bond or a paper attached thereto, to be certified by the officer administering it, an oath that he will support the constitution of the United States and the constitution of the state of South Dakota, and that he will faithfully and impartially to the best of his knowledge and ability perform all the duties of his office (naming it fully) as provided by the condition of his bond written within. All other civil officers are required to take and subscribe on the back of their appointment, commission or certificate of election an oath to support the constitution of the United States and the constitution of the state of South Dakota, and to faithfully and impartially perform all the duties of their office (naming it fully) to the best of their knowledge and ability. [C. L. 1372.]

1880. Approval. [Ch. 147, '95.] The bonds of all state and circuit officers shall be given to the state of South Dakota and, except the

bond of the attorney general, shall be approved by the governor, the attorney general and the presiding judge, or, in his absence, another judge of the supreme court. The bond of the attorney general shall be approved by the governor and two of the judges of the supreme court. The bonds of all such officers, when approved, except the bond of the secretary of state, shall be filed in the office of the secretary of state, and the bond of the latter shall be filed in the office of the state auditor. The bonds of all county, township and precinct officers shall be given to the county; those of all county and precinct officers under the county shall be approved by the board of county commissioners, and shall, together with the oaths of office of all other such officers, be filed with the county clerk, except the bond and oath of the register of deeds, which shall be filed with the clerk of the circuit court for the county or judicial subdivision. The bonds of township officers shall be approved by the chairman of the township board of supervisors of the township, and shall be filed in the office of the clerk of the circuit court for the county or judicial subdivision, and the oaths of all other township officers shall be filed in the office of the township clerk. [C. L. 1373.]

1881. Amounts of bonds of various officers. [Ch. 93, '91.] The bond of the state auditor shall be in the penal sum of ten thousand dollars, of the state treasurer in the penal sum of two hundred and fifty thousand dollars, of the secretary of state in the penal sum of five thousand dollars, of the superintendent of public instruction in the penal sum of two thousand dollars, of the commissioner of school and public lands in the penal sum of twenty thousand dollars, of the state engineer of irrigation in the penal sum of two thousand dollars, of the clerk of the circuit and county courts in the penal sum of one thousand dollars, of the state's attorney in the penal sum of one thousand dollars, of notaries public in the penal sum of five hundred dollars; the bonds of county register of deeds, judges of the county courts, sheriffs, coroners, surveyors, treasurers, all assessors, justices of the peace and constables, whether of the county or any township therein, shall each be in a penal sum to be fixed by the board of county commissioners in each county; but that of the county treasurer shall not be in a less penal sum than four thousand dollars, except when the total amount of taxes to be by him collected in any year is less than two thousand dollars, and then in double the amount of taxes to be by him collected; provided, that in no case shall the bond of the county treasurer be less than the sum of one thousand dollars; those of justices of the peace shall not be less than the penal sum of three hundred dollars each, and those of constables shall not be in a less penal sum than two hundred dollars each. [C. L. 1374.]

1882. Sureties. Every official bond shall be given with at least two sureties, and the bond of the state treasurer shall have at least four sureties, and that of the county treasurer at least three sureties. [C. L. 1375.]

1883. Approval, how signed. The approval shall in all cases be indorsed upon the bond and signed by the officer approving, or by the chairman of the board of county commissioners; but in case the board of county commissioners or the chairman of the township board of supervisors should decide a bond presented to them to be insufficient, a reasonable time not to exceed five days shall be allowed the officer to supply a sufficient bond, and either board may take three days to consider the approval of any bond. If either board refuse or neglect to approve the bond of any county officer or township officer elect, he may present the same to the judge of the district court and serve notice thereof upon the board; and due proof of such service being made to the judge at the time therein named, he shall, unless good cause for delay appear, proceed to hear and to determine the sufficiency of the bond, and may approve the same, and such approval shall be in all respects valid. [C. L. 1376.]

1884. Bonds recorded. The bonds of all county, township and precinct officers immediately after the approval of the same shall be recorded at length in the office of the register of deeds of the county to which such bonds are given, in a book to be provided and kept for that purpose. When the said bonds are so recorded they shall be forthwith filed respectively as provided in section thirteen hundred and seventy-three. [C. L. 1377.]

1885. Fee for recording. The register of deeds shall be entitled to charge and receive a fee of fifty cents for recording each official bond recorded by him pursuant to this act, to be paid by the principal in said bond. [C. L. 1378.]

1886. When term of office begins. Except when otherwise specially provided, the regular term of office for all county, township and precinct officers, when elected for a full term, shall commence on the first Monday of January next succeeding their election; but if the office to which he was elected be vacant at the time of election, even if he was not elected to fill a vacancy, he shall forthwith qualify and enter upon the duties of his office. [C. L. 1379.]

1887. Officers qualify, when. [Ch. 109, '97.] Except when otherwise specially provided, all state, district, county, township and precinct officers shall qualify and enter upon the duties of their office on the first

Monday of January succeeding their election or within twenty days thereafter. [C. L. 1380.]

1888. Vacancy occurs, when. If any person elected to any office mentioned in the preceding section shall fail to qualify and enter upon the duties of such office within the time fixed by law, such office shall be deemed vacant and shall be filled by appointment by the authority provided by law to fill such vacancy; provided, however, that if there is a contest for such office, or if the person elected to such office is prevented or obstructed in any manner from entering upon the duties of such office, the time prescribed in which he shall qualify and enter upon the duties of his office shall not govern, and he shall be allowed twenty days after the day of such decision or the termination of such preventing or obstructing cause in which to qualify. [C. L. 1381.]

1889. Bonds construed. The bonds and oaths of all civil officers shall be construed to cover duties required by law subsequent to giving them; and no official bond shall be void for want of compliance with the statute, but it shall be valid in law for the matter contained therein. [C. L. 1382.]

Official bond in excess of the amount required by law is valid and may be enforced to the full amount of the penalty of the bond. *State v. Taylor et al.*, 72 N. W. Rep. 407.

1890. Officers re-elected must account. When the incumbent of any office is re-elected he shall qualify as above required; but his bond shall not be approved until he has produced and fully accounted for all public funds and property in his control under color of his office during the expiring term, to the person or authority to whom he should account, and the fact and date of such satisfactory exhibit shall be indorsed upon the new bond before its approval. [C. L. 1383.]

1891. Public property delivered to successor. Every officer elected or appointed under the laws of the state, on going out of office at the expiration of his term thereof, shall deliver to his successor in office all public moneys, books, records, accounts, papers and documents in his possession belonging or appertaining to such office. [C. L. 1384.]

It is the duty of a retiring county treasurer, having been elected and failing to qualify, whereupon the vacancy is filled by appointment, to turn over to his successor the moneys and effects of his office without demand. *Stutsman County v. Mansfield*, 5 Dak. 78; 37 N. W. Rep. 301.

ARTICLE 2. VACANCIES AND SUPPLYING SAME.

1892. Vacancies, how caused. Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office:

1. The death of the incumbent.
2. His resignation.

3. His removal from office.
4. Failure to qualify as provided by law.
5. His ceasing to be a resident of the state, district, county, township or precinct in which the duties of his office are to be exercised or for which he may have been elected.
6. His conviction of any infamous crime or of any offense involving a violation of his official oath.
7. Whenever a judgment shall be obtained against him for a breach of his official bond. [C. L. 1385.]

RESIGNATIONS.

1893. To whom made. Resignations may be made as follows:

1. Of all state and district officers, to the governor.
2. Of all members of the legislative assembly, to the presiding officer of their branches respectively, when in session; and when not in session, to the governor; and when made to the presiding officer he shall at once notify the governor thereof.
3. Of all the officers of the legislative assembly, to the respective branches thereof.
4. Of all elective county officers, by filing or depositing such resignation in writing in the office of the county clerk, except that of county clerk, which shall be filed or deposited with the board of county commissioners, which resignations, unless a different time is fixed therein, shall take effect upon such filing or deposit.
5. Of officers of civil townships, to the board of supervisors of the township, except of members of said board, which shall be to the township clerk; and notice shall forthwith be given by the township clerk to the clerk of the circuit court of the resignation of all officers whose bonds are filed with that officer.
6. Of all officers holding their office by appointment, to the body, board, court or officer that appointed them. [C. L. 1386.]

REMOVALS.

1894. Causes for. All elective county, township and precinct officers may be charged, tried and removed from office for either of the causes following:

1. Habitual or wilful neglect of duty.
2. Gross partiality.
3. Oppression.
4. Extortion.
5. Corruption.
6. Wilful maladministration in office.

7. Habitual drunkenness.

8. For a failure to produce and account for all public funds and property in his hands at any settlement or inspection authorized by law. [C. L. 1387.]

Officer for definite term removable for cause cannot be removed without notice of cause and opportunity to defend. State ex rel. Hitchcock v. Hewett et al., 3 S. D. 187; 52 N. W. Rep. 875.

"Cause" must be construed to mean "sufficient cause." Id.

1895. Who may bring action. The board of county commissioners in the name of the county or any person in his own name may make such a charge and bring the action, and the circuit court shall have exclusive original jurisdiction thereof. The proceedings shall be as provided in the codes of civil and criminal procedure. [C. L. 1388.]

1896. Court may suspend. At any time after the commencement of the action the court may suspend the accused from the functions of his office until the determination of the matter, if sufficient cause appear from testimony or affidavits then presented; and if such suspension take place, the board of county commissioners shall temporarily fill the office by appointment. [C. L. 1389.]

1897. Questions, how tried. The question of fact shall be tried as in other actions, and if the accused is found guilty, judgment shall be entered removing the officer from his office and declaring the latter vacant, or as provided for in the code of criminal procedure; and a copy thereof shall be certified to the board of county commissioners, and the county clerk shall enter the same upon the proper record. [C. L. 1390.]

1898. Property delivered to successor. Upon the death, resignation, suspension or removal from office of any officer, all books and papers belonging to his office and all moneys in his hands and all property of whatever kind held by him by virtue of his office shall be delivered to his successor. [C. L. 1391.]

FILLING VACANCIES.

1899. Vacancies, how filled. All vacancies, except in the offices of members of the legislative assembly, shall be filled by appointment as follows:

1. In the state and circuit officers, by the governor
2. In county and precinct officers, by the board of county commissioners, except vacancies in said board.
3. In officers of civil townships, by the justices of the peace of the township, together with the board of supervisors or a majority of them, by warrant under their hands; and if a vacancy occurs from any cause

in the foregoing board of appointment the remaining officers of such board shall fill any vacancy therein. [C. L. 1392.]

Section 1392, Comp. Laws, is not in conflict with section 1858, R. S. U. S., authorizing filling of vacancies whether it happens from resignation or death. *McGee v. Gardner*, 3 S. D. 553.

1900. Vacancy in county board. When a vacancy occurs in the board of county commissioners it shall be the duty of the remaining member or members of said board, with the judge of the county court and county clerk, to immediately appoint some suitable person to fill such vacancy from the district where the vacancy occurs. And in case a majority of the officers before described do not agree as to the appointment of a person to fill said vacancy, the county treasurer shall be called in and shall act as an additional member of said board to fill said vacancy. [C. L. 1393.]

1901. Brief vacancies. If a vacancy occurs thirty days previous to an election day at which it may be filled, no appointment shall be made unless it be necessary to carry out said election and the canvass of the same according to law; in that case an appointment may be made at any time previous to said election to hold until after said election or until his successor is elected and qualified. [C. L. 1394.]

1902. Appointments — term. Appointments under the provisions of this act shall be made in writing, and made to continue until the next general election at which the vacancy can be filled, and until a successor is elected and qualified, to be filed with the secretary of the state or in the proper county offices respectively. [C. L. 1395.]

1903. Appointees qualify. Persons appointed to offices as herein provided shall qualify in the same manner as is required of those elected, the time of which shall be prescribed in their appointment. [C. L. 1396.]

ARTICLE 3. DEPUTIES.

1904. Who may appoint. The state auditor, treasurer, and superintendent of public instruction, the county treasurer, sheriff, register of deeds, surveyor, clerk of the district court, and assessor may each appoint a deputy, for whose acts as such he shall be responsible; and each officer required to give bond may require a bond from his deputy in a penal sum not greater than half the penal sum of his own bond, and such bond may be retained by the officer for his own protection; and the appointment must be in writing and shall be revocable in writing at the pleasure of the principal, and all such appointments and revocations shall be filed as and where required for the bond and oath of the principal. [C. L. 1397.]

County treasurer has no authority to employ clerk until necessity therefor has been determined by the board and compensation fixed. *Tillotson v. Potter County*. S. D. 71 N. W. Rep. 754.

1905. State's attorney. [Ch. 108, '91.] § 1. The state's attorney may appoint a deputy, who shall be an attorney of record. During such deputyship the person so appointed shall be vested with all the powers of such state's attorney; provided, however, all fees for services performed or expenses incurred by such deputy shall be paid by the state's attorney.

1906. County assessor. The county assessor may appoint a deputy in each government township or any number of deputies, and the sheriff may appoint such number of deputies as he may deem necessary. [C. L. 1398.]

1907. Oath of deputy. Each deputy shall take and subscribe the same oath as his principal (naming his deputyship), which shall be indorsed upon and filed with his certificate of appointment. [C. L. 1399.]

1908. Certain officers not to be deputies. No state officer can appoint as his deputy any other state or any district officer, nor can a state treasurer appoint as his deputy any county treasurer, judge of the county court, register of deeds, sheriff, or county commissioner; nor can either the clerk of the circuit court, the register of deeds or sheriff appoint as his deputy either of the others or their deputies. [C. L. 1400.]

ARTICLE 4. WHERE OFFICES KEPT.

1909. Keep within jurisdiction. It shall be unlawful for any county, township or precinct officer in this state to keep his office or keep any books, papers, records or other property belonging to said county, township or precinct in said county [at any place] other than that in which he is required by the laws now in force to keep said office. [C. L. 1401.]

1910. Penalty. Any county, township or precinct officer violating any of the provisions of this act is guilty of a misdemeanor. [C. L. 1402.]

ARTICLE 5. FEES AND SALARIES.

SECRETARY OF STATE.

1911. Fees — must collect in advance. [Ch. 62, '91.] § 1. The secretary of state shall charge the following fees for services performed in his office, and shall collect the same in advance:

For examination, filing and recording of articles of incorporation of domestic corporations, except religious, charitable, benevolent and fraternal associations, and issuing charter, ten dollars.

For examination, filing and recording of articles of incorporation of religious, charitable, benevolent and fraternal associations, three dollars.

For examination and filing of articles of incorporation of foreign corporations and issuing certificate of authority to do business in this state, ten dollars.

For filing and recording appointment of resident agent of foreign corporations and issuing certificate, two dollars.

For examination of annual statement of building and loan associations and issuing certificate of authority, five dollars.

For filing, recording and safe keeping of any instruments, or papers, required by law to be filed and recorded in his office, per folio of one hundred words, twenty cents.

For making transcript of any record, instrument or paper, on file in his office, per folio of one hundred words, twenty cents.

For filing and safe keeping of official bonds, official oaths, or any other instrument or paper required by law to be filed only, fifty cents.

For each commission, requisition, passport, or other document, signed by the governor and attested by the secretary of state, under the great seal of the state, and making the proper record of the same, two dollars.

For appointment and commission of commissioner of deeds, five dollars.

For official certificate, or attestation, and impression of the great seal, one dollar.

For examination and filing of amendments of articles of incorporation, one dollar.

For each search of the records of his office, fifty cents.

COMMISSIONER OF SCHOOL AND PUBLIC LANDS.

1912. Fees. [Ch. 63, '91.] § 1. That there shall be paid by the party, or parties, who shall hereafter lease, or purchase of the state of South Dakota, any school or public lands, the following fees, viz.: For each lease, seventy-five cents; for each contract for lands purchased, one dollar, and for each patent, one dollar and twenty-five cents, to be paid at the time the lands are leased, or sold, as provided by law for the payment of principal and interest; provided, that the fee to be paid for patent shall not be paid until final payment of principal and interest.

1913. County treasurer to collect. [Ch. 63, '91.] § 2. The fees provided for in section one of this act shall be remitted by the several county treasurers, whose duty it is to collect the same, to the state treasurer to be by him credited to the general fund.

STATE AUDITOR.

[Salary, see Constitution.]

STATE TREASURER.

[Salary, see Constitution.]

CLERK OF CIRCUIT COURT.

[See 767.]

REGISTER OF DEEDS.

1914. Fees. [Ch. 90, '90.] The register of deeds is entitled to charge and receive the following fees:

For recording deed, mortgage or other instrument, and indexing, for the first four hundred words, fifty cents.

For each additional folio, ten cents.

Copy of record, for each ten words, one cent.

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.

And whenever any person presents an abstract to the register of deeds who made the same, for continuation of such abstract, it shall be his duty to continue the same and he shall be entitled to receive ten cents for each new transfer and twenty-five cents for his certificate thereto, and no more.

Entering satisfaction of mortgage or lien, twenty-five cents.

For recording each certificate of marriage, twenty-five cents.

For recording marks and brands, each twenty-five cents.

For filing and indexing chattel mortgage, ten cents.

For recording a final receipt from the receiver of any United States land office, fifty cents. [C. L. 1407.]

May waive right to fees in advance and when he receives instrument is bound to record it. *Parrish v. Mahany et al.*, 73 N. W. Rep. 97.

1915. Disposition of fees. [Ch. 86, '93.] § 1. All fees received by registers of deeds for making abstracts of title shall be covered into the salary fund and accounted for and disposed of as other fees received by them.

COUNTY CLERK.

1916. Salary. For performing the duties of clerk of the county commissioners and attending to the business of the county, the county clerk

shall receive 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 six hundred dollars.

For each certificate and seal in other cases, twenty-five cents. [C. L. 1408.]

SHERIFF.

1917. Fees. The sheriff shall be entitled to charge and receive the following fees:

Serving *capias* with commitment or bail bond and return, two dollars.

For each search on search warrant, one dollar.

Arresting under search warrant, each defendant, one dollar.

Serving summons, 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, fifty cents.

Copy of summons, order of attachment, twenty-five cents.

Copy of writ of injunction, *scire facias*, each ten words, one cent.

Serving subpoena for witness, each person, twenty-five cents.

Taking and filing replevin bond or other indemnification to be furnished and approved by the sheriff, one dollar.

Traveling expenses, for each mile actually and necessarily traveled, ten cents.

Making copy of any process or bond or paper other than herein provided, for every ten words, one cent.

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, sixteen dollars.

Summoning special jury, for each person impaneled, twenty-five cents.

[For regulations regarding mileage of sheriffs in summoning grand and petit juries, see also 1818.]

[For duties regarding recounting board, see 2018.]

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 any goods and chattels which he may be required to have appraised, sixty cents; and to each appraiser to be taxed as costs, one dollar.

Advertisement of sale in newspaper, in addition to the printing, sixty cents.

Advertising in writing for sale of personal property, one dollar.

Posting notices of sale of real property, one dollar.

Executing writ or order of partition, two dollars.

Making deed for land sold on execution or order of sale, two dollars.

Committing prisoner to prison or discharging therefrom, fifty cents.

Opening court and attending thereon, per day, to be paid by the county, four dollars; but this per diem shall not be construed to apply to deputies, and shall not be allowed for attendance on justices' or probate courts.

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.

In all cases in the district court where 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 the following compensation: If the amount for which the property is bid in shall be one thousand dollars or less, the sum of five dollars and no more; if the amount for which the property is bid in be more than one thousand dollars, the sum of ten dollars and no more.

The sheriff making the sale of real property under the foreclosure of mortgages by advertisement, shall receive the same fees and no more that are now or may hereafter be provided by law for the sale of real property under a judgment of foreclosure and sale of real property.

For boarding prisoner, per day, not exceeding seventy-five cents, to be determined by the board of county commissioners.

For distributing ballot-boxes to the various precincts, two dollars per day and mileage.

For executing death warrant, such fee as the board of county commissioners shall deem reasonable and just, to be paid by the county.

In all cases where personal property shall be taken by the sheriff on execution or on an order of attachment, and applied in satisfaction of the debt without sale, he shall be allowed the same percentage on the appraised value of the same as in case of state. [C. L. 1409.]

1918. Mileage. The sheriffs of all counties in the state of South Dakota shall be entitled to receive five cents a mile for each mile necessarily and actually traveled for summoning a grand and petit jury, to be paid by the county in addition to the compensation now allowed by law; provided, that no additional mileage shall be allowed a sheriff for summoning talesmen, over and above that now fixed by law. [C. L. 1410.]

1919. Fees in justice and county courts. The sheriffs of the several counties, for performing the duties required by law to be performed by them in the probate or justices' 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. [C. L. 1412.]

1920. Statement of fees by officer. When any sheriff or other officer shall serve any summons, subpoena, bench warrant, venire or other process in any action to which this state or any county is a party, such officer shall be required to indorse upon said writ or process or upon a paper attached thereto, at the time he makes his return of service thereon, a statement of his fees for such service, the number of miles traveled and the amount of his mileage, and in case he shall fail to make his return with such statement and file the same with the clerk of the court from which such process issued before judgment shall be pronounced in the action to which such process relates, he shall receive no fees for such service, and the county commissioners of the county where such service is performed are hereby prohibited from allowing the same. [C. L. 1413.]

CORONER.

1921. Fees. The coroner shall be entitled to charge and receive the following fees:

For a view of each body and taking and returning an inquest, five dollars.

For a view of each body and examination without inquest, three dollars.

For taking information, fifty cents.

For issuing subpoenas, warrant or order for a jury, fifty cents.

For qualifying an inquest, fifty cents.

For administering oath or affirmation to witness, ten cents.

For each adjournment, fifty cents.

For taking deposition, drawing and returning inquisition, for each ten words, one cent.

For each mile traveled to and returning from an examination or inquest, ten cents.

For physician making post-mortem examination of dead body, ten dollars.

Which fees shall be paid out of the county treasury when they cannot be obtained from the estate of the deceased; but in all cases of murder or manslaughter, out of the goods, chattels, lands and tenements of the slayer, if he hath any, otherwise by the county, with mileage for distance actually traveled to and from the place of securing the dead body.

For all other services rendered, the same fees as are allowed the sheriff, and mileage. [C. L. 1414.]

MASTER IN CHANCERY.

1922. Fees. A master in chancery shall be entitled to charge and receive the following fees:

For copying any paper or instrument of writing, taking testimony, for every ten words, one cent.

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 fees 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.

For all services pertaining to the sale of real estate the same fees as are allowed by law to the sheriff in like cases. [C. L. 1415.]

COUNTY TREASURER.

1923. Fees. Each county treasurer shall receive for his services the following fees:

On all money collected by him for each fiscal year, four per centum.

On all sums collected, percentage shall be allowed but once, and in computing the amount collected for the purpose of charging percentage all sums from whatever source derived shall be included together.

For advertising and selling lands for delinquent tax an additional fee of five per centum, to be paid only so far as the lands are actually sold and out of the fund received therefor, and to be collected in each case where the lands are sold and from the purchaser; but for all other cases and services the treasurer shall be paid pro rata from the respective funds collected by him, whether the same be in money, state or county warrants.

For each and every levy he or his deputy shall make on personal property for the satisfaction of a tax or taxes, he shall receive a fee

of one dollar, and ten cents for every mile actually traveled by him, to be collected out of the property levied on by him; and for the sale of personal property so levied on by him he shall receive a fee of one dollar, to be collected out of the property so levied on by him. [C. L. 1417.]

Not entitled to commission on money received on the sale of bonds for the erection of courthouse. *Sandager v. Walsh County*, 6 S. D. 31; 50 N. W. Rep. 196; *Territory v. Cavanaugh*, 3 S. D. 325; 19 N. W. Rep. 413.

1924. Non-resident tax payer. In all cases where persons residing outside the state 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. [C. L. 1418.]

NOTARIES PUBLIC.

1925. Fees. Notaries public are entitled to charge and receive the following fees:

For each protest, one dollar and fifty cents.

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 proof of acknowledgment, twenty-five cents. [C. L. 1419.]

[For making and mailing notice of protest, see 769.]

JUSTICES OF THE PEACE.

(Ch. 92, 1890. In force June 5, 1890.)

1926. Fees. [Ch. 92, '90.] Justices of the peace shall be entitled to charge and receive the following fees:

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*, order of arrest, or *venire* for jury, fifty cents.

Issuing subpoena, twenty-five 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, twenty-five 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, twenty-five cents.

Issuing warrant or mittimus, fifty cents.

Taking information or complaint, fifty cents.

Discharge to jailer, twenty-five cents.

Dismissal, discontinuance or satisfaction, twenty-five cents.

Written notice to party or parties, ten cents.

Filing notice and opening judgment for rehearing, fifty cents.

Each adjournment, fifty cents; but no fees shall be allowed for an adjournment from one hour to another hour of the same day.

Performing marriage ceremony, three dollars.

Each day's attendance upon trial of a course, after the first day, two dollars; and for each half day, one dollar.

Provided, That when more than one action, to which this state or any county is a party, is tried on the same day, not more than one fee shall be allowed for such day's attendance.

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 centum on the amount. [C. L. 1420.]

CONSTABLES.

1927. Fees. Constables shall be allowed the same fees as are allowed to sheriffs for like services. [C. L. 1421.]

COUNTY SURVEYORS.

1928. Fees and per diem. Three 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 each way.

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, three dollars.

Expenses of necessary assistance shall in addition be paid by the party or parties requiring the work to be done. [C. L. 1422.]

COUNTY ASSESSORS.

1929. Per diem. Each assessor, or his deputy, shall receive for his services for each and every day actually engaged the sum of three dollars. [C. L. 1423.]

COUNTY COMMISSIONERS.

1930. Per diem and mileage. 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 for the distance actually traveled in attending the meetings of the board and when engaged in other official duties, to be paid out of the general county fund. [C. L. 1424.]

[Ch. 48, '91.] Provided, however, that no county commissioner shall receive more than one hundred and twenty-five dollars as per diem, nor more than forty dollars as mileage, during any one year.

FEES IN MATTERS OF ESTRAYS.

1931. Compensation of various officers. The following fees are allowed in cases of estrays:

To justices of the peace, for issuing any warrant of appraisal, fifty cents.

For filing and entering in docket the sworn report of appraisers, fifty cents.

Taking and entering the affidavit of the taking up of any estray, fifty cents.

For posting notices of estray, and certifying copy of the sworn reports of the appraisers to the register of deeds, fifty cents.

Posting notices and selling an estray, two dollars.

Advertising an estray, if published in a newspaper, three dollars.

To each appraiser, twenty-five cents.

To register of deeds, for entering certified copy of sworn report of appraisers, twenty-five cents, and for each inspection of the estray registry, ten cents. [C. L. 1425.]

JURORS.

1932. Per diem and mileage. For each day's attendance at any circuit 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.

For juror in justice's court, each day or part of day, one dollar. [C. L. 1426.]

1933. Taxation — jury fee — civil cases. There shall be paid by the party against whom a verdict is rendered in the circuit 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. [C. L. 1427.]

1934. Jury fee — criminal cases. 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 defendants, which sum when collected shall be paid into the county treasury for the use of the county. [C. L. 1428.]

WITNESSES.

1935. Per diem and mileage. For each day's attendance before the circuit court, or before any other court, board or tribunal, in all civil and criminal cases, one dollar; and for each mile actually traveled one way, ten cents; provided, that in all criminal cases witness fees shall be paid out of the treasury of the proper county. [C. L. 1429.]

PRINTERS.

1936. Rates — measurement. [Ch. 66, '91.] In all cases where publication of legal notices of any kind is required or allowed by law, the person or officer desiring such publication shall be required to pay at the rate of seventy-five cents per square of twelve lines of nonpareil type, or its equivalent, for the first insertion, and fifty cents per square for each subsequent insertion, and in all cases of publication of notices in connection with sales upon execution, the plaintiff, except in divorce cases, may designate the newspaper, published within the county, in which such notice shall be published. All legal advertisements containing less than a square, as above defined, shall be paid for at the rate of ten cents per line of nonpareil type or its equivalent, for each insertion, but the amount to be paid for such fractional part of a

square shall not exceed the amount to be paid for a full square, as above provided. [C. L. 1430.]

1937. Affidavit of publication. The affidavit of publication of all notices required by law to be published shall contain a statement that the full amount of the fee charged for the publishing of the same inures to the benefit of the publisher or publishers thereof, that no agreement or understanding for the division thereof has been made with any other person and that no part thereof has been agreed to be paid to any person whomsoever, that every affidavit of publication shall state in plain terms the fees charged thereon. [C. L. 1431.]

1938. Additional affidavit. There shall be annexed to all affidavits of publication of notices required by law an affidavit sworn and subscribed to by the party or one of the parties or his or their authorized agent or attorney or one of his or their authorized agents or attorneys, that they directed the publication of the annexed notice, that no agreement or understanding for any division of the fees therefor has been made with any person whomsoever, and that no part thereof has been refunded or rebated by the party or parties publishing said notice. No affidavit of publication shall in any case be filed or recorded until such additional affidavit shall be so annexed thereto. [C. L. 1432.]

MISCELLANEOUS PROVISIONS.

1939. Fees for interpreters. Interpreters or translators may be allowed such compensation for their services as the court shall certify to be reasonable and just, to be paid and collected as other costs, but the same shall not exceed two dollars per day. [C. L. 1433.]

1940. Fees for acknowledgments. Officers authorized by law to take and certify acknowledgments of deeds and other instruments are entitled to charge and receive twenty-five cents each therefor, and for administering oaths and certifying the same, ten cents. [C. L. 1434.]

1941. Taxing costs. In all actions, motions and proceedings in the supreme, circuit, county or justices' courts, the costs of the parties shall be taxed and entered on record separately. [C. L. 1435.]

1942. Fees paid in advance. The clerk of the supreme court and of each circuit court, the register in chancery, county 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. [C. L. 1436.]

1943. Table of fees posted — penalty for neglect. All officers whose fees are by this article determined and 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 office; and if any such officer shall neglect to keep a table of fees of his office as aforesaid, such officer shall for 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. [C. L. 1437.]

1944. Compensation of bailiffs. It shall be the duty of the circuit 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. [C. L. 1438.]

1945. Per diem to be sworn to. 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:

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).

Any disbursing officer of this state who shall pay any portion of the salary of any officer aforesaid before such oath or affirmation is taken and subscribed, shall forfeit to this state the sum of fifty dollars, which forfeiture may be sued for by any taxpayer. [C. L. 1439.]

1946. Fees to be turned over monthly. [Ch. 65, '91.] § 1. That all county and state officers for whose services a salary is provided by law, shall receive no compensation for their services other than that so provided by law, and all fees received by them under any of the existing provisions of law shall be paid by the officer so receiving the same into the county or state treasury, as the case may be, at the end of each and every month, and when not under any provision of law credited to a special fund, shall be placed to the credit of the general fund of the county or state; provided, however, that this act shall not be so construed as to in any manner affect any officer who receives no salary other than the fees paid for his services, nor to register of deeds for making abstracts of title.

CHAPTER 14. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS.

1947. Governs all but special elections. All elections for state, district, county, township, precinct, city and other officers provided by law shall hereafter be held and conducted in the manner prescribed in this chapter; except as otherwise specially provided for schools in incorporated cities and towns, and for the division of a county into civil townships. [C. L. 1440.]

1948. General and annual elections. The general election shall be held in the several election precincts on the Tuesday next after the first Monday in November in each year, at which election shall be chosen as many officers as are by law to be elected; provided, that all elections held in the odd-numbered years shall be termed annual elections, and all elections held in the even-numbered years shall for the purpose of distinction be termed general elections; and all officers appointed since the last general election and all officers appointed in the organization of new counties shall hold their respective offices until the next succeeding general election unless otherwise especially stated in their commissions. [C. L. 1441.]

1949. Judges appointed, precincts established. The several boards of county commissioners shall respectively at least thirty days prior to the general election in each appoint three capable and discreet persons possessing the qualifications of electors to act as judges of elections at each precinct for the poll of elections therein as provided for in this act; and in case of the failure of the said board from any cause to make such appointment as herein provided, then the county clerk shall make such appointment within thirty days thereafter, and said board shall set off and establish election precincts in so much of the county as is not included in organized civil townships therein, and such precincts shall be set off and established in such manner as that no one precinct shall be within more than one commissioner district, and that there shall be at least one voting precinct in each commissioner district; and the county clerks of the several counties shall make out and deliver to the sheriff, coroner or other person that may be designated by the board of county commissioners of each county, immediately after the appointment of said judges of election, a notice in writing thereof, directed to the judges of election so appointed; and it shall be the duty of such sheriff, coroner or other person appointed as provided in this section, within ten days after receiving such notice, to serve the same upon each

of the said judges of election; provided, that every organized civil township shall constitute an election precinct, and the township supervisors thereof shall be the judges of election for all elections whether general or special held for any purpose whatever in the county; provided, further, that in counties not organized into civil townships, the board of county commissioners shall have power to set off and establish election precincts in addition to those before established by such board, or to create new election precincts and appoint the place of holding elections therein when deemed by such board to be advisable. [C. L. 1442.] See §§ 2058-2059.

1950. Clerks chosen — term of office. The said judges shall choose two persons having similar qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers to be held at their respective precincts until other judges shall be appointed as hereinbefore directed, and the said clerks of election may continue to act as such during the pleasure of the judges of election, and the county commissioners shall from time to time fill all vacancies which may occur in the office of judges of elections at any election precinct within their respective counties. [C. L. 1443.]

1951. Notice of election published — form. The county clerks or auditors of the several counties shall cause to be published in each of the newspapers designated by the board of county commissioners to publish their official proceedings, for at least four consecutive weeks next preceding any general election and at least three consecutive weeks next preceding any special election, a notice thereof; said notice to be as nearly as circumstances will admit as follows, to wit:

Notice is hereby given that on the second Tuesday, the day ofnext, at the house of....., in the town, district or precinct of in the county of an election will be held for state, district or county officers (naming the offices to be filled, as the case may be), which election will be opened at eight o'clock in the morning and will continue open until five o'clock in the afternoon of the same day. Dated this .. day of, A. D. 18.. (as the case may be). (Signed) A. B., county clerk (or auditor).

The filing with the county clerk or auditor of the county in which said general election or special election is held, of an affidavit of publication in proper form by one of the publishers or the foreman or manager of each of said newspapers, shall be received as evidence that such publication has been properly made; provided, that in case there shall be no newspaper published in the county in which such election is to be held, then the county clerk or auditor shall deliver three copies of such notice to the sheriff, coroner or other person designated by the board of county commissioners. [C. L. 1444.]

1952. Notices posted, where and when. The sheriff, coroner or other person to whom such notice shall be delivered as aforesaid shall put up

in three of the most public places in each township or district the notice referring to such district, precinct or town, at least twenty days previous to the time of holding any general election and at least eight days previous to the time of holding any special election, and in cases where towns or districts may not be set off by law as election precincts said notices shall be posted as follows: One at the house where the election is authorized to be held, and two others at two of the most public places in that vicinity or settlement. [C. L. 1445.]

1953. Vacancy filled. If any person appointed to act as judge of election as aforesaid shall neglect or refuse to be sworn to act in such capacity, or shall not be present, the place of such person shall be filled by the votes of such qualified electors residing within the county, town, district or precinct as may then be present at the place of election, and the person or persons so elected to fill the vacancy or vacancies shall be and are hereby vested for that election with the same power as if appointed by the board of county commissioners. [C. L. 1446.]

1954. Oath of office. Previous to votes being taken the judges and the clerks of the election shall severally take an oath in the following form, to wit:

I, A. B., do solemnly swear (or affirm, as the case may be), that I will perform the duties of judge (or clerk, as the case may be), according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same. [C. L. 1447.]

1955. Who administer oath. In case there shall be no judge of a court or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered, to administer the oath to each other and to the clerks of the election; and the person administering oaths shall cause an entry thereof to be made and subscribed by him and prefixed to the poll-book. [C. L. 1448.]

1956. Polls open, how long. At all elections to be held under this chapter the polls shall be open at the hour of eight o'clock in the forenoon and continue open until five o'clock in the afternoon of the same day, at which time the polls shall be closed. Thirty minutes before the closing of the polls proclamation shall be made that the polls will be closed in half an hour, and immediately after the polls have been closed the judges and clerks of election shall proceed forthwith to count and canvass the votes cast, and they shall complete said canvass and certify thereto before any adjournment shall be had. [C. L. 1449.]

1957. Penalty for rejecting legal vote. Any board of judges who shall wilfully and knowingly reject any legal vote shall be subject to

a fine of fifty dollars, to be collected before any justice of the peace, on the complaint and proof of any person. [C. L. 1450.]

1958. Vote by ballot. Every elector shall vote by ballot, and each person offering to vote shall deliver his ballot to one of the judges of election in presence of the board. The ballot shall be a white paper ticket which shall contain written or printed or partly written and partly printed the names of the persons for whom the electors intend to vote, and shall designate the office to which each person so named is intended by him to be chosen. But no ballot shall contain a greater number of names of persons designated to any office than there are persons to be chosen at the election to fill each office. Any judge of election who shall receive or allow to be deposited in the ballot-box any ticket printed or written on other than white paper, shall forfeit and pay to the county a sum not less than fifty dollars, to be recovered by a civil action in the name of the county commissioners of the county in which such judge of election resides. [C. L. 1451.]

1959. Names on one ticket. The names of all persons voted for by any elector at any general election or special election shall be one ballot. [C. L. 1452.]

1960. Challenges. [Ch. 61, '89.] If any person offering to vote shall be challenged as unqualified, by any judge or clerk of election or by any other person entitled to vote at the same poll, the board of judges shall declare to the person so challenged the qualifications of an elector; if such person shall then state himself duly qualified, and the challenge shall not be withdrawn, one of the judges shall tender the following oath: You do solemnly swear (or affirm, as the case may be,) that you are twenty-one years of age; that you are a citizen of the United States, (or that you have declared your intention to become a citizen conformably to the laws of the United States and this state on the subject of naturalization, and have taken an oath to support the constitution of the United States;) that you have resided in the United States for one year; in this state for six months; three months in the county, and thirty days in the precinct next preceding this election, and that you have not voted at this election. And if any person so challenged shall refuse to take such oath so tendered his vote shall be rejected; and after taking such oath if the judges have good reason to believe that the person so offering to vote is not a legal voter, before receiving his vote they shall require him to subscribe the oath, which shall be written out and preserved with the poll-books for future reference.

1961. Penalty for perjury. If any person so offering such vote shall take such oath knowing it to be false he shall be deemed guilty of wilful and corrupt perjury, and shall on conviction suffer such punishment as now is or shall hereafter be prescribed by law for persons guilty of perjury. [C. L. 1454.]

1962. Judges keep ballot-boxes. There shall be provided and kept by the judges of each election precinct, at the expense of the county in which such precincts are situated, a suitable ballot-box with lock and key. [C. L. 1455.]

1963. Style of ballot-box. There shall be an opening through the lid of such box of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls the ballot-box shall be carefully examined by the judges of the election that nothing may remain therein; it shall then be locked and the key thereof delivered to one of the judges to be designated by the board, and shall not be opened during the election except in the manner and for the purposes hereinafter mentioned. [C. L. 1456.]

1964. Deposit ballots in box. When a ballot shall be received, one of the judges without opening the same or permitting it to be opened or examined except to ascertain whether it be a single ballot, shall deposit it in the ballot-box. [C. L. 1457.]

1965. Clerk to keep poll-list. Each clerk of election shall keep a poll-list which shall contain the names of all the persons voting at such election, in their numerical order. [C. L. 1458.]

1966. Adjournments — duty of clerk. At each adjournment of the polls for dinner the clerk shall in presence of the judges compare their respective poll-lists, compute and set down the number of votes and correct all mistakes that may be discovered, according to the decision of the board, until such poll-lists shall be made in all respects to correspond. [C. L. 1459.]

1967. Adjournment — protecting box. The box shall then be opened and the poll-list placed therein; and said box shall then be locked and a covering with a seal placed on the opening in the lid of such box so as entirely to cover the same, and the key delivered to one of the judges and the box to another to be designated by the board. [C. L. 1460.]

1968. Disposition of key and box The judge having the key shall keep it in his own possession and deliver it again to the board at the next opening of the polls; and the person having the box shall carefully keep it without opening it or suffering it to be opened or the seal thereof to be broken or removed; and shall publicly in that condition deliver it

to the board of judges at the next opening of the poll, when the seal shall be broken, the box opened, the poll-lists taken out and the box again locked. [C. L. 1461.]

1969. Duty of judge to challenge. It shall be the duty of any judge of election to challenge every person offering to vote whom he shall know or suspect not to be qualified as an elector. [C. L. 1462.]

1970. Qualification. [Ch. 61, '89.] Every male person above the age of twenty-one years, who shall have been a resident of the United States for one year; of the state for six months; three months in the county; and thirty days in the precinct next preceding the election, who is a citizen of the United States, or who has declared his intention to become such, and shall have taken an oath to support the constitution of the United States, and persons who have been declared by law to be citizens of the state and shall have complied with the provisions of any law which is now or may in future be in force relating to the registration of voters, shall be entitled to vote, and all persons possessing the qualifications mentioned in this section, and who have resided in this state twelve months, shall be eligible to any office in the said state; provided, however, that persons shall vote in the precincts where they reside and not elsewhere, provided, this act shall not be held to deprive any person of the right to vote who is now entitled thereto under the laws of this state. [C. L. 1486.]

1971. Duty of county clerk. No election returns shall be refused by any county clerk for the reason that the same may be returned or delivered to him in any other than the manner directed in this chapter, nor shall he refuse to include any returns in his estimate of votes for any informality in holding an election or making returns thereof; but all returns shall be received and the votes canvassed by such county clerk, and a certificate given to the person or persons who may by such returns have the greatest number of votes. [C. L. 1480.]

1972. Penalty for violation of election law. If any judge or clerk of election or county clerk or any other person in any manner concerned in conducting the election shall corruptly violate any of the provisions of this chapter, he shall forfeit and pay to the county a sum not less than fifty nor more than five hundred dollars, to be recovered by a civil action in the name of the county commissioners of the proper county. [C. L. 1481.]

1973. Highest number of votes elects. In all elections for the choice of any officer, unless it is otherwise expressly provided, the person having the highest number of votes for any office shall be deemed to have been elected to that office. [C. L. 1482.]

1974. Civil process not served on election day. During the day on which any general, special, town, precinct or charter election shall be held no civil process shall be served on any elector entitled to vote at such election. [C. L. 1483.]

1975. Special constables. For the preservation of order, as well as to secure the judges and clerks from insult and abuse, it shall be the duty of the constable or constables residing in the town, district or precinct [to attend at elections], and should no constable attend at such elections the judges of elections are hereby authorized and empowered to appoint one or more special constables to assist in preserving order during the election; and the judges are hereby authorized to enforce a fine not exceeding fifty dollars on any person or persons who shall conduct in a disorderly or riotous manner and shall persist in such conduct after having been warned of the consequences, and on refusing to pay the same, to commit him or them to the common jail of the county for any time not exceeding twenty days or until the same shall be paid; and the constable to whom the order shall be directed, and the jailer of the county, are hereby required to execute said order, and receive such person or persons so committed as though it had been issued by a magistrate in due form of law. [C. L. 1463.]

1976. Duty of judges after closing polls. As soon as the poll of the election shall be finally closed the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public and shall be continued without adjournment until completed. [C. L. 1464.]

1977. Canvass, how conducted. The canvass shall commence by a comparison of the poll-lists from the commencement, and a correction of any mistake that may be found therein, until they shall be found or made to agree. The box shall then be opened and the ballots contained therein be taken out and counted by the judges unopened except so far as to ascertain whether each ballot is single, and if two or more ballots shall be found so folded together as to present the appearance of a single ballot they shall be laid aside until the count of the ballot shall be completed; and if upon a comparison of the count with the poll-lists and the appearance of such ballots a majority of such judges shall be of opinion that the ballots thus folded together were voted by one elector, they shall be destroyed. [C. L. 1465.]

1978. Disagreement of ballots and poll-book. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll-lists, they shall be replaced in the box, after being purged as above, and one of the judges shall publicly draw out and destroy therefrom

as many ballots unopened, as shall be equal to such excess. [C. L. 1466.]

1979. Duty of clerks. The ballot and poll-list agreeing or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll-books the name of every person voted for, written at full length, the office for which such person received such votes and the number he did receive, the number being expressed at full length, such entry to be made as nearly as circumstances will admit in the following form, to wit:

At an election held at the house of A. B., in the town, district or precinct, in the county of and state of South Dakota, on the day of, the following named persons received the number of votes annexed to their respective names for the following described offices, to wit: A. B. had..... votes for delegate to congress; C. D. had votes for the legislative council; E. F. had..... votes for member of the house of representatives; G. H. had votes for coroner; I. J. had..... votes for sheriff; K. L. hadvotes for county commissioner (and in like manner for any other persons voted for Certified by us, A. B., C. D., E. P., judges of election. Attest: G. H., I. K., clerks of election. C. L. 1467.]

1980. One poll-book to be sent to county clerk. The judges of election shall then inclose and seal one of the poll-books, and, under cover, direct the same to the county clerk of the county in which such election was held, and the packet thus sealed shall be conveyed by one of the judges or clerks of election, to be determined by lot if they cannot otherwise agree, or by some other person to be agreed upon by the judges, and deliver to said county clerk at his office within three days after the closing of the polls; and the other poll-book, together with the ballots and ballot-box, deposited with the chairman of the board of county commissioners; and the said poll-book shall be subject to inspection at any time thereafter. And said poll-books shall be preserved as a public record, and the ballots and ballot-boxes shall be carefully kept until such boxes are needed at some subsequent special or general election. [C. L. 1468.]

1981. Penalty for failure to deliver poll-book. If any judge or clerk of election, after being deputed by the judges of election at which he shall have served as judge or clerk, to carry the poll-books of such election to the county clerk, or any other person deputed for that purpose, shall wilfully refuse or neglect to deliver such poll-book to the said county clerk within the time specified by law, safe with the seals unbroken, he shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding twelve months, or by both such fine and imprisonment. [C. L. 1469.]

1982. Compensation of judges. There shall be allowed out of the county treasury of each county to the several judges and clerks of elec-

tion two dollars per day, and the person carrying the poll-books from the place of election to the county clerk's office the sum of five cents per mile for going and returning. [C. L. 1470.]

1983. Time of election. [Ch. 59, '91.] § 1. On the Tuesday next after the first Monday in November in the year eighteen hundred and ninety-two and every four years thereafter, or on such day as the congress of the United States may direct, a poll shall be opened in each voting precinct, for the election of electors of president and vice-president of the United States, the number of whom is to be equal to the number of senators and representatives in congress to which this state may be entitled, or such other number as the congress of the United States may require.

1984. Number to be chosen. [Ch. 59, '91.] § 2. The names of all the electors to be chosen shall be written or printed on each ballot, and each ballot shall contain the name of at least one inhabitant of each congressional district into which the state may be divided, and against the name of each person shall be designated the number of the congressional district to which he belongs; provided, however, that if no congressional districts be established, then such ballot shall contain the name of at least one inhabitant for each member in congress at large.

1985. Manner of conducting election. [Ch. 59, '91.] § 3. This election shall be conducted the same as directed in relation to the election of state officers, so far as the same may be applicable, and except as otherwise expressed by law providing for making and canvassing the returns of the election of electors of president and vice-president of the United States.

ABSTRACT.

1986. County clerk to make separate abstracts — canvass of returns — certificates of election. [Ch. 84, '90.] § 1. On or before the tenth day after the close of any election or [as] soon thereafter as all the returns are received the county clerk or auditor shall take to his assistance a majority of the county commissioners of the county, or the county treasurer, judge of the county court and one county commissioner, none of which persons so called, shall be candidates for office, unless there is not sufficient of said officers, who are not such candidates, and shall proceed to open the returns from the various voting precincts, in said county, and make abstracts of the votes in the following manner:

The abstracts of the votes cast for governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, judges of the supreme court, judges of the circuit court, and all other state officers shall be on one sheet; the abstracts of the votes for members of congress and electors of president and vice-president of the United States shall be made on one sheet; the abstracts of the votes for the members of the legislature and of county and precinct officers shall be on one sheet; and it shall be the duty of the county clerk or the county auditor, as the case may be, to make out a certificate of election to each of the persons having the highest number of votes for members of the legislature, where said county constitutes one legislative district, and for county and precinct officers respectively, and to deliver said certificate to the person entitled to it, on his making application for the same.

1987. Certified abstracts — to whom delivered. [Ch. 84, '90.] § 2. Each of the aforesaid abstracts of the votes made, as aforesaid, shall be duly signed and certified by the said canvassers, under the seal of said county clerk, or auditor, and shall be deposited in the office of said clerk, or auditor. It shall be the duty of said county clerk or auditor, to immediately make a certified copy of the abstract of the votes for members of the legislature and for county and precinct officers, and forward the same by mail, to the secretary of state, at the seat of government. He shall also make a certified copy of the said abstract of votes for members of congress and electors of president and vice-president of the United States and shall inclose the same and direct to the secretary of state, and indorse on the outside of the envelope, these words: "Abstracts of votes for [naming the officers], returned to the auditor's or clerk's — office of — inserting the name of county — county," and the said auditor's — or clerk's — signature; and shall forward the same to the secretary of state, without unnecessary delay. He shall also make and forward to the governor, to the secretary of state, and to the presiding judge of the supreme court, at the seat of government, each, a certified copy of the abstract of the votes cast for state officers; and shall indorse on the envelope inclosing the same, the words: "Certificates of the votes for governor, lieutenant governor, secretary of state, treasurer of state, attorney general," and any other state officer as the case may be, and the name of the county in which said votes are given.

1988. State canvassers — their duties. [Ch. 84, '90.] § 3. Within thirty days after said election, the governor, and secretary of state in the presence of the auditor of the state, the attorney general, and one or more judges of the supreme court shall open the returns made to the

secretary of state, for members of congress and for electors of president and vice-president of the United States, and shall forthwith proceed to ascertain the number of votes given to the different persons for said offices; and the person having the highest number of votes shall be considered duly elected; but if it appears that more than the number of persons to be elected have the highest and an equal number of votes, the secretary of state in the presence of the governor and officers aforesaid, shall decide by lot which of said persons shall be elected, and to each person duly elected, the governor shall give a certificate of election, signed by him, sealed with the great seal, and countersigned by the secretary of state, and shall transmit the said certificates to each person so elected, and shall issue and publish his proclamation declaring the election of such persons.

1989. When returns not received — messenger, how paid. [Ch. 84, '90.] § 4. If the returns of election of any organized county in this state shall not be received at the office of the secretary of state, within twenty days after the day of election, the said secretary shall forthwith send a messenger to the county clerk or auditor of said county, whose duty it shall be to furnish said messenger with a certified copy of said returns; and the said messenger shall be paid out of the treasury of the state, the sum of ten cents per mile for each mile he shall necessarily travel, in going to, and returning from the office of said county clerk or auditor, and the treasurer of the state shall present a bill against the county not sending the election returns, within time, to the office of the secretary of the state, and such bill shall be presented to the board of county commissioners of such county, for the whole amount paid to such messenger, and the county commissioners, when such bill is presented, shall allow the same in full, and shall issue a warrant for the amount of the bill so presented, and such warrant shall be paid in cash by the county treasurer, of such county, whenever the same is presented, or as soon thereafter as the money is received in the county treasurer's office.

[Ch. 60, '91.] "Provided, that the state auditor shall draw his warrant upon the state treasurer, in favor of such messenger, for the full amount due him on account of such mileage when a proper voucher, approved by the secretary of state, shall be presented to him therefor."

1990. Abstracts, where kept. [Ch. 84, '90.] § 5. The said abstracts shall be kept in the office of the secretary, unopened, until the day appointed for opening them, and shall be opened only in the presence of the board of canvassers.

BOARD OF CANVASSERS.

1991. Board of state canvassers created. [Ch. 84, '90.] § 6. The governor, the presiding justice of the supreme court, the secretary of the state and the auditor of the state, in the presence of the attorney general and lieutenant governor, shall constitute a board of canvassers, to canvass the return of votes for all state officers, but no member thereof shall take part in canvassing the votes for any office for which he, himself, is a candidate.

1992. Duties of board. [Ch. 84, '90.] § 7. On the Thursday following the fourth Monday after the day of election, the board of state canvassers shall open and examine the returns from all the counties, if they are received from all the counties; and if not all received, they may adjourn, not exceeding twenty days, for the purpose of obtaining the returns from all the counties, and when these are received, shall proceed with the canvass.

1993. Abstract of votes. [Ch. 84, '90.] § 8. They shall make an abstract stating the number of ballots cast for such office, the names of all persons voted for, for what office they respectively received the votes, and the number of votes each received, in words at length, and stating whom they declare to be elected to each office, which abstracts shall be signed by the canvassers in their official capacity, and as state canvassers, and have the seal of the state affixed.

1994. Record of abstract. [Ch. 84, '90.] § 9. The secretary shall record the abstract in a book to be kept by him for recording the result of state elections and to be called the election book, and also file the abstract

1995. Certificate of election. [Ch. 84, '90.] § 10. A certificate of election shall be prepared and signed by the governor, if present, and acting; if not, by the secretary, with the seal of the state affixed in either case, and shall be attested by the other canvassers; but in the absence of the governor, the secretary's certificate properly executed shall be delivered to each person elected.

1996. A majority decides — new elections. [Ch. 84, '90.] § 11. A majority of the members of the state canvassing board shall decide all matters of dispute, and it is made their duty to disregard all technicalities, and misspelling, the use of initial letters, abbreviations of the names of candidates, if it can be ascertained from the returns, for whom the votes are intended. In case there shall be no choice by reason of any two or more persons having an equal and the highest number of votes the governor shall, by proclamation, order a new election.

MEETING OF PRESIDENTIAL ELECTORS.

1997. Electors of president and vice-president to meet at the capital. [Ch. 84, '90.] § 12. The electors chosen as aforesaid, shall at twelve o'clock, noon, on the day which is, or may be directed by the congress of the United States, meet at the seat of government of this state, and then and there perform the duties enjoined upon them by the constitution and laws of the United States.

1998. Electors give notice to the governor. [Ch. 84, '90.] § 13. Each elector of president and vice-president of the United States shall, before the hour of twelve o'clock, noon, on the day next preceding the day fixed by the law of congress, to elect a president and vice-president, give notice to the governor that he is at the seat of government and ready at the proper time, to perform the duties of an elector; and the governor shall forthwith deliver to the electors present a certificate of all the names of the electors; and if any elector named therein fails to appear before nine o'clock in the morning of the day of election of president and vice-president as aforesaid, the electors there present shall immediately proceed to elect by ballot, in the presence of the governor, persons to fill such vacancies.

1999. Vacancies. [Ch. 84, '90.] § 14. If more than the number of persons required to fill the vacancies as aforesaid have the highest, and an equal number of votes, then the governor, in the presence of the electors, attending, shall decide by lot which of said persons shall be elected; otherwise, they, to the number required, having the greatest number of votes, shall be considered elected, to fill such vacancies.

2000. Notice by the governor. [Ch. 84, '90.] § 15. Immediately after such choice is made, the names of the persons, so chosen, shall forthwith be certified to the governor by the electors, making such choice; and the governor shall cause immediately notice to be given, in writing, to the electors, chosen to fill such vacancies; and the said persons so chosen shall be electors and shall meet the other electors at the same time and place, and then and there discharge all and singular, the duties enjoined upon them as electors aforesaid by the constitution and laws of the United States, and of this state.

2001. Compensation. [Ch. 84, '90.] § 16. The electors shall receive the same compensation per diem, and the same mileage as members of the legislature.

NEW ELECTIONS.

2002. Tie — new election. [Ch. 84, '90.] § 17. When a tie shall exist between two or more persons for the senate or house of representatives the county clerk or auditor shall give notice to the sheriff

of the county, who shall immediately advertise another election, giving at least ten days' notice. And it shall be the duty of the county clerk of each county, on the receipt of the returns of any general or special election, to make out his certificate, stating wherein the compensation, to which the judges and clerks of any election may be entitled for their services, and lay the same before the board of county commissioners at their next session, and the said board shall order the compensation aforesaid to be paid out of the county treasury.

2003. County board of canvassers. [Ch. 84, '90.] § 18. If the county auditor or county clerk, as the case may be, is a candidate for office, he shall take no part in the canvass, but shall act as a clerk of said board of canvassers for the county, and the two officers called to the assistance of the county clerk or auditor to make the county canvass shall call to their assistance one of the officers of said county, who is not a candidate, and if there is none of said officers remaining who is not a candidate, then they shall call to their assistance a justice of the peace, and it shall thereupon be their duty to at once attend and make said canvass as hereinbefore provided.

LEGISLATURE.

2004. Liberty to resign — vacancies, how filled. [Ch. 84, '90.] § 19. Any person who shall receive a certificate of his election as a member of the legislature, or as a county officer, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties, or taken the requisite oath of office; and when any vacancy shall happen in the office of a member of the senate or house of representatives of the legislature, by death, resignation or otherwise, it shall be the duty of the county clerk of the county, in which the vacancy has occurred, to officially notify the governor thereof; whereupon the governor shall issue a writ of election, directed to the sheriff of the county or district, in which such vacancy shall happen, commanding him to notify the several judges of election, in his county or district, to hold a special election to fill such vacancy, or vacancies, at a time to be appointed by the governor; providing that if there be no session of the legislature between the happening of such vacancy or vacancies, and the time of the general election, it shall not be necessary to order a special election to fill such vacancy; and when any vacancy shall happen in the office of any member of congress from this state for any reason, or in any of the various state offices, for any reason, it shall be the duty of the governor to issue his proclamation appointing a day to hold a special election to fill such vacancy, to be held as aforesaid.

2005. Vacancy in legislature when in session. [Ch. 84, '90.] § 20. Should any vacancy happen in the office of members of the senate or house of representatives, while the legislature is in session, by death, resignation, removal or otherwise, it shall be the duty of the governor immediately upon receiving official notification of the same, to proceed in the same manner as in the cases named in section nineteen.

2006. Vacancy, how filled in case of division of the legislative districts. [Ch. 84, '90.] § 21. If a vacancy shall occur in the senate or house of representatives in this state, for any cause, and if the county or counties comprising the district in which such vacancy has happened, shall have been divided after the election of the member whose seat is vacant and before the election to supply the vacancy, such election shall be ordered in every county, in which any part of the original county or district may be situated, but no person shall be permitted to vote at such election, who does not at the time reside within the limits of the organized county, or district in which such vacancy occurred; provided, that nothing herein contained shall be so construed, as to permit any person so residing within the limit who has not the other qualifications of an elector to vote.

2007. Duties of the secretary of state. [Ch. 84, '90.] § 22. The secretary of the state shall at least thirty days before every general election transmit to the county auditors or clerks, of the several counties, blank forms, and envelopes, for all returns of votes required to be made to his office, with such printed directions on the envelopes as he deems necessary for the guidance and direction of such officers in making the returns according to law, and the expense of printing such blanks and envelopes shall be paid by the state. [Ch. 60, '91.] And the state auditor shall draw his warrant upon the state treasurer, in favor of the secretary of state, for the full amount of the expense incurred by him in carrying out the provisions of this section.

2008. Duty of county clerk. [Ch. 84, '90.] § 23. In case of elections to fill vacancies as provided for in this act, immediately after receiving the election returns from the several precincts, the county clerk or auditor shall, as provided in this act, proceed to canvass the votes returned, and without delay forward to the secretary of the state, the copies of the abstracts of the same.

2009. When two or more counties comprise one legislative district. [Ch. 84, '90.] § 24. When two or more counties are united in one senatorial or representative district, it shall be the duty of the clerks, or auditors, of the respective counties, to attend at the office of the clerk

of the senior county, of such district, within twenty days, after the day of the election, and in conjunction with the clerk, or auditor of the senior county, to compare the votes given in the several counties, comprising such senatorial or representative district; and said auditor or clerk shall immediately make out a certificate of election for the person, or persons having the highest number of votes in such district for member or members of the senate or house of representatives, which certificate shall be delivered to the person entitled thereto, on his application to the county auditor, or clerk, of the senior county of such district at his office; and any breach of the provisions of this section shall be deemed a misdemeanor and punishable accordingly.

2010. General laws govern. [Ch. 84, '90.] § 25. The canvass of the votes cast in such [each] election precinct, and the returns made by the judges thereof shall be conducted and made in the same manner as provided in the compiled laws of the former territory of Dakota, the provisions of which, upon this subject, are hereby adopted and declared to be the law of this state, except so far as the same are repealed, modified or changed by this act.

[For section 26, see section 2031.]

2011. Tie vote, canvassers to notify circuit judge — duty of judge. [Ch. 81, '93.] § 1. Whenever it shall be ascertained by any county board of canvassers that the requisite number of senators or members of the house of representatives to which such county may be entitled or the requisite number of county officers for such county have not been elected by reason of two or more persons having received an equal number of votes for senator or representative, or for one and the same county office as shown by a canvass of the returns of the various voting precincts, such county board of canvassers shall immediately certify such fact to the judge of the circuit court for such county, stating therein the number of votes cast for each person for such office. Said judge shall thereupon make an order directing that all ballots cast for the several candidates for senator or representative or for such county office as the case may be, shall be recounted, and he shall in and by such order appoint not less than five persons having the requisite qualifications of electors of such county, and not more than three of whom shall be members of the same political party, to be known and designated as a recounting board, and shall direct them to meet at the office of the county clerk or auditor, or other suitable place at the county seat, at a time to be designated in such order not more than five days after date thereof, and to carefully recount all the ballots cast in the several voting precincts

of such county for senator or representative or county office, as to which a tie has been declared, and to certify the result of such recount as soon as the same is completed to said judge, setting forth in such certificate the total number of ballots cast in each precinct for each person for senator or representative or for any such county office, and the aggregate number of such ballots for each such person in such county as ascertained by such recount.

2012. Clerk of board. [Ch. 81, '93.] § 2. The county clerk or auditor shall act as clerk of such board, unless he be a candidate for an office concerning which such recount is to be made, in which case said judge shall designate some other officer or person to act as such clerk.

2013. Oath of office. [Ch. 81, '93.] § 3. The persons so appointed to recount shall, before entering upon their duties, each be sworn to faithfully and impartially perform the duties imposed upon him by such order, and to make and certify a true return of the result of such recount as required by such order.

2014. Duty of sheriff. [Ch. 81, '93.] § 4. The order provided for in section one of this act shall be immediately delivered to the sheriff of such county for service and shall be served by him upon each of the persons therein appointed to act on said board by delivering a copy of the same to such person and shall forthwith make return as to such service to the judge who issued such order or orders. If from such return it shall appear that one or more of the persons so appointed cannot be found or cannot be served, or if it shall appear to the satisfaction of said judge that for any reason one or more of the persons so appointed cannot serve upon such board, he may immediately, by a further order, designate any other person or persons having the qualifications hereinbefore prescribed, to act upon such board in place of the person or persons not served with said order or unable to attend, which further order or orders shall be served on the person or persons therein appointed in the same manner as hereinbefore provided for said first order.

2015. Certificate of election issued to person having highest number of ballots on recount. [Ch. 81, '93.] § 5. Upon the certification and return by such recounting board to said judge of the circuit court of the result of their recount of all the ballots cast in such county for the several candidates for senator or representative or for the office or offices designated in such order, if it shall appear from such certificate and returns that any one of such candidates for senator or representative, or in case such county may be entitled to more than one senator or

representative, that two or more of such candidates, not exceeding the number to which such county may be entitled, have received a higher number of votes than any other candidate for senator or representative as the case may be, or that any candidate for a county office has received a higher number of votes than any other candidate for such office, such circuit judge shall make an order directing the county clerk or auditor to make out a certificate of election for the person or persons having received the highest number of votes for member of the senate or house of representatives, or for a county office as shown by the return of such recounting board and to deliver said certificate to the person entitled thereto, on his making application for the same. And such certificate shall have the same force and effect as is given by law to a certificate made by the county clerk or auditor on a canvass made by a county board of canvassers.

2016. Tie, how decided. [Ch. 84, '90.] § 26. If the requisite number of county officers shall not be elected, by reason of two or more persons having an equal and the highest number of votes for one and the same office, the county clerk, whose duty it is to compare the polls, shall give notice to the several persons so having the highest and equal number of votes, to attend at the office of the county clerk, or auditor, at the time appointed by said county clerk, or auditor, who shall then and there proceed publicly, to decide by lot, which of the persons so having an equal number of votes shall be declared duly elected, and the said county clerk shall make and deliver to the person thus declared duly elected, a certificate of his election as hereinbefore provided.

2017. Cases of tie on recount decided by lot. [Ch. 81, '93.] § 6. If it shall appear from the certificate and return of such recounting board that a tie exists between two or more candidates for the senate or house of representatives and by reason thereof the requisite number have not been elected, another election shall be had as provided in section seventeen (17) of chapter eighty-four (84) of the session laws of eighteen hundred and ninety. And if it shall appear from such certificate and return that the requisite number of county officers have not been elected by reason of two or more persons having an equal and the highest number of votes for one and the same office, the county clerk or auditor shall give the notice and proceed to decide by lot which of such persons shall be declared duly elected as provided in section twenty-six (26) of chapter eighty-four (84) of the session laws of eighteen hundred and ninety.

2018. Compensation, how paid. [Ch. 81, '93.] § 7. The sheriff shall be entitled to the same fees for making service of the order, and

the return provided for in section four (4) of this act, as is allowed him for serving summons in a civil suit. And each of the members of such recounting board shall be entitled to receive three dollars per day for the time actually and necessarily spent in such service, and five cents per mile for each mile actually traveled in coming to and returning from the place of meeting, by the usual route. And it shall be the duty of the county clerk or auditor to make out his certificate, stating therein the compensation to which such sheriff and members of such board may be entitled for their services, and to lay the same before the board of county commissioners at their next session; and the said board of county commissioners shall order the compensation aforesaid to be paid out of the county treasury the same as other election expenses.

2019. Contest — limitation — elections. [Ch. 81, '93.] § 8. In all cases in which a certificate of election shall be issued under the provisions of this act, the time provided by law, within which notice of contest must be given, shall begin to run from the date of such certificate.

2020. Duties of officers when two or more counties comprise district. [Ch. 81, '93.] § 9. When two or more counties are united in one senatorial or representative district, and it shall appear from a comparison of the votes given in the several counties composing such district, as provided in section twenty-four (24) of chapter eighty-four (84) of the session laws of eighteen hundred and ninety, that the requisite number of senators or representatives to which such district may be entitled, have not been elected, by reason of two or more persons having received an equal number of votes for senator or representatives, the county clerk or auditor of each [of] such counties shall immediately certify such fact to the judge of the circuit court for the county of which he is auditor, or clerk, and such judge shall thereupon make an order appointing a board to recount the ballots cast for senator or representative, as the case may be, in such county, in the same manner as provided in section one (1) of this act, and the same proceeding shall be thereupon had, as provided in sections one (1), two (2), three (3) and four (4) of this act.

2021. New election, how called. [Ch. 81, '93.] § 10. A certified copy of the certificate and return made by the several recounting boards appointed in the counties composing such district shall be made and transmitted by the county clerk or auditor of each such county to the judge of the circuit court for the senior county, and upon a comparison of the votes so certified in the several counties composing such senatorial or representative district, if it shall appear that one or more

of the candidates for senator or representative have been duly elected, he shall by an order direct the county clerk or auditor of such senior county to issue a certificate of election to the person so elected. But, if upon a comparison of the vote so certified, it shall appear that the requisite number of senators or representatives have not been elected, another election shall be had as provided in section seventeen (17) of chapter eighty-four (84) of [the] session laws of eighteen hundred and ninety.

2022. Duty of clerk or auditor. [Ch. 81, '93.] § 11. The county clerk or auditor of each county composing such senatorial or representative district shall certify to the board of county commissioners of each such county the compensation to which the sheriff of each county and the members of the recounting board appointed therein are entitled, as provided in section seven (7) of this act.

2023. Clerk or auditor to turn over ballots—meetings public. [Ch. 81, '93.] § 12. The county clerk or auditor, or other person having custody of the ballot-boxes and ballots after any election, shall, upon the appointment of a recounting board, as herein provided, immediately deliver the same to said board, and said board shall have charge thereof during such recount. The meetings of such board and the recounting, herein provided for, shall be open to the public, but no person other than a member of such board shall be allowed to take or handle any of the ballots, and immediately after such recounting is completed the ballots shall be returned to the several boxes and again delivered to the person entitled to the custody thereof.

2024. Majority shall decide. [Ch. 81, '93.] § 13. A majority of the members comprising such recounting board shall decide all matters of dispute, and in recounting of the ballots the provisions of section thirty-one (31) of [the] session laws of eighteen hundred and ninety-one shall be observed.

TALLY SHEETS.

2025. Tally sheets to be delivered to judges of election—what to contain. [Ch. 82, '93.] § 1. Before the opening of the polls at any election to be held under the provisions of chapter fifty-seven of the session laws of eighteen hundred and ninety-one, the county auditor of the county, or the municipal clerk or city auditor in the case of a municipal election, shall cause to be delivered to the judge of election of each election precinct which is within the county or within the

municipality in case of a municipal election, and in which the election is to be held, at the polling place of the precinct, with the poll books to be used at such election, tally sheets to be used in the canvass of the votes cast at such election, which tally sheets shall be ruled by horizontal and perpendicular lines so as to form squares of suitable size to contain five tally marks each, four of which may be upright and the fifth crossing the same at an oblique angle, every fifth perpendicular line in such ruling to be red, so that five squares for tally marks shall be contained between each two red lines. In a perpendicular column at the left margin of each tally sheet there shall be printed, or written in ink in a plain and legible manner, the names of all candidates and all questions submitted to the electors at such election, in the same order that the same shall have been arranged upon the official ballot used at such election; provided, that at a general election there shall be tally sheets provided for presidential electors, members of congress and state officers separate from the tally sheets for county and municipal officers and questions submitted to vote. There shall be at the right of each name or question, in one or two horizontal lines, a sufficient number of squares for tally marks as above provided, on the tally sheet for each precinct to contain tally marks for one-third more votes than were cast in such precinct at the last preceding general election, not exceeding in any case six hundred. The name of each candidate shall also be printed or written in red ink in small but legible letters between each two red lines and across the upper portion of each set of squares at the right of the name of the same candidate in the left-hand column, so that the clerk who tallies the vote will be enabled to place the tally marks in the proper square without looking to the left-hand column for the name. There shall be a sufficient space at the right of the squares on such tally sheet to write out in full the total number of votes tallied for each candidate and question voted upon.

2026. Tally sheets to be returned with poll books. [Ch. 82, '93.] § 2. Such tally sheets shall be returned with the poll books and shall be a part of the official returns, and in any case in which the certificate of the precinct judges as to the number of votes cast for any candidate or in favor of or against any question submitted to the electors shall not agree with the votes as shown by such tally lists, the canvassing board to which such returns are made shall take as correct the number of such votes shown by such tally list rather than by the certificate.

2027. Form of tally sheets. [Ch. 82, '93.] § 3. The tally sheets provided for in the foregoing sections shall be, as near as may be, in the following form:

The tally sheet used at the election, held in precinct, county of, state of South Dakota, on the day of, A. D. 189..

	HENRY DAVIS					HENRY DAVIS					Totals.
HENRY DAVIS - For Representative in Congress.											
	WILLIAM WARREN					WILLIAM WARREN					
WILLIAM WARREN For Governor											
	JAMES BROWN					JAMES BROWN					
JAMES BROWN - For County Treasurer											
AMENDMENT Of Section 2, Article 21, of the Constitution.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
	No	No	No	No	No	No	No	No	No	No	

We hereby certify that the above is one of the tally sheets used by us in the canvassing of the ballots cast at the election above described. All ballots cast for each candidate and on each question submitted at said election are correctly tallied by the tally marks in the squares at the right of the name of each candidate and of each question so submitted, and that the total of all such ballots are correctly carried out and stated in the column at the right headed " totals."

.....

Judges of Election.

ELECTION IN UNORGANIZED COUNTIES.

2028. Who entitled to vote. [Ch. 84, '95.] § 1. That all persons residing in any of the unorganized counties of this state having the qualifications of electors of this state, shall have the right to vote at all elections held in this state for all state and national officers and upon all questions submitted to a vote of the people, in the same manner and to the same effect as if said persons were residents of organized counties.

2029. County commissioners to establish voting precincts and appoint judges of election. [Ch. 84, '95.] § 2. That at each and every state

or national election held in this state, the county commissioners of the county to which any unorganized county is or may be attached, shall at the time and in the manner provided by law for the establishing of voting precincts and appointing judges of elections in organized counties, establish in such unorganized county or counties voting precincts and appoint judges and clerks of elections who shall be residents of the precincts in which they are appointed to act, and shall provide booths and ballot-boxes for said precincts and perform such other acts as are necessary for the carrying out the provisions of this act.

2030. County auditor to provide ballots. [Ch. 84, '95.] § 3. The county auditor of the county to which any unorganized county is or may be attached, shall at every state and national election held within this state provide printed ballots for each of said voting precincts in the same manner as is or may be provided by law for furnishing voting precincts in organized counties with ballots, said ballots shall be in the form prescribed by law and shall contain the name of no candidate but those for state or national offices, and contain no question but what is submitted to the people of the whole state.

2031. Commissioners to levy tax for expense of election. [Ch. 84, '95.] § 4. The county commissioners for each organized county to which any unorganized county is or may be attached shall levy a tax on all taxable property within said unorganized county for the purpose of defraying the actual expenses of said election and no more. And it shall be the duty of each county treasurer of said organized county to collect said tax at the same time and in the same manner as is provided for the collection of state and judicial taxes in unorganized counties, and to pay the same out on the proper warrants being presented, in the payment of expenses incurred under the provisions of this act, and for no other purpose whatever.

2032. General election laws to govern. [Ch. 84, '95.] § 5. The general election laws of this state, so far as applicable, shall govern in all elections held under the provisions of this act, and the respective officers designated by law for the conveying of booths, ballots and ballot-boxes, and for canvassing votes, making abstract of votes, certifying abstracts of votes and delivering the same, of the organized county to which any unorganized county is or may be attached, shall perform the same services and in the same manner for such unorganized county or counties as if said unorganized county was a part of said organized county.

2033. Fees. [Ch. 84, '95.] § 6. The same fees and per diem shall be paid officers and persons performing services under the provisions of this act as is or may be allowed for like services in organized counties.

2034. Provisions of this act not applicable, when. [Ch. 84, '95.]

§ 7. The provisions of this act shall not apply to any unorganized county within the boundaries of any Indian reservation.

JUDICIAL ELECTION.

2035. Supreme court judges, when elected. [Ch. 84, '93.] § 1. That on the first Tuesday after the first Monday in November in the year eighteen hundred and ninety-three, and every six years thereafter there shall be chosen judges of the supreme court of this state, who shall qualify and enter upon their duties on the first Tuesday after the first Monday of January in the year eighteen hundred and ninety-four.

2036. Circuit judges, when elected. [Ch. 84, '93.] § 2. That on the first Tuesday after the first Monday in November in the year eighteen hundred and ninety-three, and every four years thereafter, there shall be chosen judges of the circuit courts of this state, who shall qualify and enter upon the discharge of their duties, on the first Tuesday after the first Monday of January in the year of eighteen hundred and ninety-four.

2037. General election laws govern. [Ch. 84, '93.] § 3. That the election herein provided for shall be conducted in the same manner as is provided by law for conducting general elections.

SECRECY OF BALLOT AND INDEPENDENCE OF VOTERS.

2038. Printing and distributing ballots. [Ch. 60, '97.] § 1. All ballots cast in elections for public officers within this state, except township, school township and school district officers, shall be printed and distributed at public expense as hereinafter provided. The printing of ballots, and cards of instructions for the electors in each county, shall be paid for in the same manner as other county expenses, excepting that in elections held for incorporated cities and towns, said expenses shall be a charge upon such cities and towns respectively.

2039. Conventions or primaries. [Ch. 60, '97.] § 2. A convention or primary meeting within the meaning of this act is an organized assembly of delegates or electors representing a political party or principle. Such convention or primary meeting may nominate candidates for public offices to be filled by any public election within this state.

2040. Nominations, how certified. [Ch. 60, '97.] § 3. All nominations made by such convention or primary meeting shall be certi-

fied as follows: The certificate of nomination shall be in writing and shall contain the name of each person nominated, his residence, his business address and the office for which he is named, and shall designate in not more than five words the party or principle which such convention or primary meeting represents, which certificate of nomination shall be signed by the secretary and presiding officer of such convention or primary meeting, each of whom shall add to his signature his place of residence, his business and business address, and be delivered by one of them to the secretary of state of this state or the county auditor of the proper county as hereafter required.

2041. Certificates, where filed. [Ch. 60, '97.] § 4. Certificates of nomination of candidates to be filed by the electors of the entire state or any division or district thereof greater than a county, shall be filed with the secretary of state; certificate of nomination of county and precinct officers shall be filed with the auditor of the county wherein such officer or officers are to be elected; certificates of nomination for municipal officers shall be filed with the clerks of the respective municipalities wherein the officers are to be elected; and certificates of nomination for joint members of either house of the legislative assembly, or duplicates thereof, shall be filed in the offices of the county auditors of all the counties to be represented by such joint member.

2042. Other manner of making nominations. [Ch. 60, '97.] § 5. Candidates for public office may be nominated otherwise than by convention or primary meeting, in the manner following: A certificate of nomination containing the name of the candidate for the office to be filled, and such other information as is required to be given in certificates of nomination provided for in section three of this act, may be signed by electors residing within the district or political division in and for which such officer or officers are to be elected, in the following numbers, to wit: two hundred or more when the nomination is for an office to be filled by the electors of the entire state; twenty or more when the election is for an office to be filled by the electors of a county, district, or other division less than the entire state; and five or more when the nomination is for an office to be filled by the electors of a township, precinct or ward; provided, however, that the said signatures need not all be appended to one paper. Each elector signing a certificate of nomination, shall add to his signature his place of residence, his business, and his post-office address. Such certificate of nomination may be filed with the same officer, in the same manner and with the same effect as certificates of like character made by a convention or primary meeting.

2043. Must name but one candidate for any office. [Ch. 60, '97.] § 6. No certificate of nomination shall contain the name of more than

one candidate for any office to be filled, nor shall any person join in nominating more than one person for any place to be filled, nor shall any person accept a nomination for more than one office, except as otherwise provided by law.

2044. Certificates preserved. [Ch. 60, '97.] § 7. The secretary of state, the auditors of the several counties and municipalities within this state, shall preserve all certificates of nominations which may be filed in their respective offices, for two years after the filing thereof, during which time such certificates shall be open to public inspection, upon reasonable request made.

2045. Time for filing certificates. [Ch. 60, '97.] § 8. Certificates of nominations to be filed with the secretary of state, shall be filed not less than thirty days before the day fixed by law for the election of the persons nominated; those to be filed with the county auditor shall be filed not less than twenty days before the day fixed for such election; and those to be filed with the clerks of municipalities shall be filed not less than five days before the day set for such election; provided, that the provisions of this section shall not be held to apply to certificates of nomination for offices to be filled at special elections to fill vacancies.

2046. Duties of secretary of state. [Ch. 60, '97.] § 9. Not less than twenty days before an election to fill any public office within this state, the secretary of state shall certify to the county auditor of each county within which any of the electors of this state may, by law, vote for such officer or officers as may be named in any such certificates of nomination, the name and description of each person nominated, as specified by the certificates of nomination filed in his office.

2047. Publications of nominations. [Ch. 60, '97.] § 10. At least fifteen days before the day of an election to fill any public office other than a municipal office, the county auditor of each county shall cause to be published in all newspapers within his county, all nominations for office certified to him under the provisions of this act. Two publications in each newspaper shall be deemed sufficient, one of such publications, however, shall be made upon the last day upon which such newspaper is issued before such election. In case of municipal elections such publication shall be made in one or more newspapers devoted to the dissemination of general news, and published within the municipality where the election is to be held, at least three days before the day set for such election. Such publication shall be daily until such election where there is a daily newspaper published within such municipality; but if there be no daily newspaper published within the municipal corporation, one publication in each newspaper shall be suffi-

cient; provided, if there be no newspaper published in such municipal corporation or county, then the clerk or auditor shall publish such nominations by posting lists of said nominations at three (3) public places within the limits of each voting precinct of such municipal corporation or county.

2048. Vacancies, how filled. [Ch. 60, '97.] § 11. Should any person nominated die before the printing of the ballots, or decline the nomination as in this act provided, or should any certificate of nomination be or become insufficient or inoperative from any cause whatever, the vacancy or vacancies thus caused, may be filled in the manner required for the original nominations. If the original nomination was made by party convention which had delegated to a committee the power to fill vacancies, such committee may upon the occurrence of such vacancies proceed to fill the same. The chairman and secretary of such committee shall thereupon make and file with the proper officer, a certificate setting forth the cause of the vacancy, the name of the person nominated, the office for which he or she was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and such further information as is required to be given in an original certificate of nomination. The certificate so made shall be executed in the manner prescribed for the original certificate of nomination, and shall have the same force and effect as an original certificate of nomination. When such certificate shall be filed with the secretary of state, he shall in certifying the nomination to the various county auditors, insert the name of the person who has been thus nominated to fill a vacancy in the place of the original nominee. And in the event he has already sent forth his certificate, he shall forthwith certify to the auditors of the proper counties the name and description of the person so nominated to fill the vacancy, the office he is nominated for, the party or political principles he represents, and the name of the person for whom such nominee is substituted.

2049. Name may be withdrawn from nomination. [Ch. 60, '97.] § 12. Any person whose name has been presented as a candidate, may cause his name to be withdrawn from nomination by request in writing signed by himself and acknowledged before an officer qualified to take acknowledgments of deeds and filed with the secretary of state, in case the nomination shall have been for a state office, or for an office greater than a county; or with the county auditor in case of a nomination for a county office, or with a city, town or village clerk in case of a nomination for a city, town or village office. Such withdrawal shall be filed with the secretary of state at least twenty (20) days, with the county

auditor fifteen (15) days, and with the city, town or village clerk three (3) days previous to the day of election, and no name withdrawn shall be printed on the ballots to be used.

2050. Ballots, how provided. [Ch. 60, '97.] § 13. Except as in this act otherwise provided, it shall be the duty of the county auditor of each county to provide printed ballots for every election in which the voters of the entire county participate. Such printed ballots shall contain the name of every candidate whose nomination has been certified to or filed with the county auditor in the manner provided by law, as well as any proposed constitutional amendments or questions. Sample ballots must be printed on paper of a different color from the official ballots, but in the same form, each containing the names of all the candidates, and any question that is to be voted upon. The sample ballots shall be printed and in the possession of the county auditor or other officers or boards charged with the duty of preparing such ballots, at least ten (10) days before the day of election, in case of county, district or state elections, and at least three (3) days before the day of election in case of city, town or village election, and shall be subject to public inspection. The official ballots shall be printed and in the possession of the county auditor or such other officers or boards ten (10) days before the day of election in case of county, district or state election, and one (1) day before election in case of city, town or village election

2051. Expense of ballots, how paid. [Ch. 60, '97.] § 14. Sample and official ballots for use in city, town or village elections shall be prepared under the same rules by the clerks of the respective cities, towns and villages as are laid down for the government of county auditors, and the expense of printing and delivering such ballots shall be a charge upon each city, town or village.

2052. Number of ballots to be provided. [Ch. 60, '97.] § 15. The county auditor of each county, or other public officers or boards charged with the duty of furnishing or providing ballots, shall provide for each election district or precinct in the county, one hundred (100) ballots for every fifty (50) voters, or major fraction thereof, as shown by the returns of the last preceding election, or, in the case of newly created precincts, as shown by the reports of the judges of election for the same.

2053. Error in ballots, how corrected. [Ch. 60, '97.] § 16. Whenever it shall appear by affidavit that an error has occurred in the publication of the names or descriptions of the candidates nominated for office, or in the printing of the sample or official ballots, the judge of the county court shall, upon application of any voter, by an order require the county auditor or other public official or board charged

with the duty of preparing ballots, to correct such error, or to show cause at such time and place as under the circumstances he may deem necessary, why such error should not be corrected. The county auditor or such other public official or board shall upon his or their own motion correct without delay any patent error in ballots which he or they may discover, or which shall be brought to his or their attention.

2054. Distribution of ballots. [Ch. 60, '97.] § 17. The county auditors of the various counties in this state shall, prior to an election, cause to be delivered by the sheriff or his deputies, to one of the judges of election of each precinct, town, ward or district, who shall have been regularly appointed, not later than the last Saturday preceding such election, the proper number of ballots provided for the use of the voters of such precinct, district, town or ward at such election. The same shall be sent in sealed packages, one of a kind for each and every election precinct, district, town or ward in such county, with the marks on the outside of each package clearly stating the polling place for which it is intended, together with the number of ballots inclosed. In cases of city, town or village elections the ballots shall be delivered by the city, town or village clerk to one of the judges of election, who shall have been duly appointed, on the day preceding the day of election. Receipts for ballots showing the number delivered shall be given by the judge of election in any precinct, district, town, village or ward, to show they are delivered, which receipts shall be filed with the county auditor, who shall keep a record of the time when sent, and the officer by whom the said packages were sent, and by whom received. In case of city, town or village elections the receipts and records of sending shall be received by and filed with the city, town or village clerk, wherein such election may be held. The county auditor shall take a receipt for such packages from the sheriff or his deputies by whom the same are transmitted. The judge of elections receiving such package of ballots shall, at the opening of the polls on election day, cause the same to be delivered with the seal unbroken to the election board of his election precinct, district, town or ward, and shall take receipts therefor from the judges of election, which receipts shall be returned to the county auditor with the election returns, or in case of a city, town or village election, to the clerk thereof.

2055. Duplicate ballots, how provided. [Ch. 60, '97.] § 18. In case the ballots to be furnished to any precinct, district, town or ward in accordance with the provisions of this act, shall for any reason fail to be duly delivered or received, or after delivery be destroyed or stolen, it shall be the duty of the judge of election, or election board of such precinct, district, town or ward, to immediately procure from the county

auditor, in the case of a general or county election, or from the city, village or town clerk, in case of a city, village or town election, a second package of ballots similar in all respects to those previously sent. If there be not time to thus procure additional ballots from the county auditor or from the city, town or village clerk respectively, it shall be the duty of such election board to cause other ballots to be prepared substantially in form of the official ballots, and the members of such election board shall severally make a statement under oath, to the effect that the original ballots have failed to be received, or that they have been destroyed or stolen, as the case may be, and that the ballots furnished by them are substantially similar to the official ballots, a copy of which had been previously posted, which statement shall be sent to the county auditor, or in case of a city, town or village election, to the clerk of such city, town or village, with the election returns from such precinct, district, town or ward.

2056. Style and form of ballots. [Ch. 60, '97.] § 19. All official ballots prepared under the provisions of this act, shall be printed in black ink on white paper of a good quality and in the English language only. Every ballot shall contain the name of every candidate for every office, but no party shall nominate a candidate for an office whose name appears as a candidate by another party for a different office, whose nomination has been certified or filed according to the provisions of this act. The names of candidates for each office shall be arranged under the designation in large type of the party or principle for which such nomination is made, so that all the names of candidates of each party or principle shall be in a separate column; and each party ticket shall be printed side by side on the ballots. Whenever the secretary of state has duly certified to the county auditor any question to be submitted to the people, the county auditor shall have the questions printed on the ballot in such form as will enable the electors to vote understandingly upon each question presented in the manner hereinafter provided. The county auditor shall also prepare the necessary ballots whenever any question is required by law to be submitted by vote to the electors of any part of the state less than the whole; provided, that when questions are submitted to the electors of a municipal corporation only, it shall be the duty of the municipal clerk or auditor to provide the ballots necessary to submit such question.

2057. Stamps to be provided. [Ch. 60, '97.] § 20. Before the opening of the polls the county auditor, municipal clerk or city auditor, as the case may be, shall cause to be delivered to a judge of election of each precinct within the county or municipality, for use at the polling place of the precinct a rubber or other stamp which shall contain the

words "official ballot," the name or number of the election precinct, the name of the county and the date of the election. The said stamp and other supplies for election shall be delivered and receipted for by the various officers in the same manner and at the same time as provided in section seventeen of this act for the delivery and receipt of packages of ballots.

2058. Judges of election, how appointed. [Ch. 60, '97.] § 21. The county commissioners of the several counties shall, not less than fifteen (15) days before any election, appoint judges of election for each of the several voting precincts of their county, which appointments shall be made from lists of names submitted to them by the central committees of the different parties, but in case no names are presented then the commissioners shall use their own discretion; provided, however, that all judges appointed must be qualified electors in the precinct for which they are appointed; provided, further, that in case of municipal elections such judges shall be appointed by the council or trustees thereof.

2059. Judges of election, number of — compensation. [Ch. 60, '97.] § 22. The judges appointed under the provisions of the foregoing section shall be three persons who are qualified voters of the precinct or ward for which they are appointed. They shall be allowed the sum of two dollars each day for their services, to be paid from the county funds; provided, that in incorporated cities and towns, such per diem shall be paid from the funds of such city or town in case of municipal elections. In the appointment of judges of election under this act, if three or more parties have tickets on the official ballot, one judge shall be appointed from each party having at least fifteen per centum of the voters, as shown by the returns of the last preceding election. If but two parties have tickets on such ballot, then the judges shall be selected therefrom, and the party having a majority of the votes in the election precinct or ward at the last preceding general election shall have a majority of such judges; provided, further, that when two or more parties join in supporting the same candidate or candidates for office they shall be considered as one political party for the purpose of this section and section five of this act.

2060. Booths to be provided. [Ch. 60, '97.] § 23. The county commissioners when appointing judges of election under the provisions of this act, shall designate one of such judges as superintendent, upon whom shall devolve the duty of erecting and having ready for election, a sufficient number of booths which shall be furnished by the county commissioners, together with such supplies and conveniences as shall enable the voter to conveniently prepare his ballot for voting and in

which electors can mark their ballots screened from observation; and a guard rail so constructed that no person, excepting the judges and clerks of election and the elector in the act of voting can approach within six (6) feet thereof. The number of such booths shall not be less than one (1) for every fifty (50) electors or major fraction thereof in the precinct. No person other than the electors engaged in receiving, preparing or depositing their ballots, shall be permitted to be within said rail. The expense of providing such booths and such guard rails shall be provided for in the same manner as other election expenses. On or before the first day of September of each year in which an election is to be held, the officers that are now or may hereafter be charged by law with the division or alteration of election precincts, shall as far as necessary alter or divide the existing election precincts in such manner so that no election precinct shall contain more than five hundred (500) voters and they shall establish new precincts when it is deemed necessary for the convenience of electors.

2061. Ballot clerks. [Ch. 60, '97.] § 24. At any election the judges of election shall designate two of said judges who shall be known as ballot clerks whose duty it shall be to deliver ballots to the qualified electors. Before delivering a ballot to any elector the judge acting as ballot clerk, shall print on its back and near the top of the ballot with the rubber or other stamp provided for the purpose the designation, "official ballot" and other words on said stamp as provided for in this act.

2062. Marking of ballots. [Ch. 81, '99; ch. 60, 97.] § 25. On receipt of his ballot the voter shall forthwith, and without leaving the polling place, retire alone to one of the booths provided to prepare his ballot. He may prepare his ballot by making a cross in the circle over the head of the ticket he desires to vote, and if he desires to vote for any candidate on any other ticket on the ballot, he must make a cross in the circle at the left of the candidate's name for whom he desires to vote, and in case a voter does not wish to vote a party ticket he need not make a cross in the circle at the head of the ticket, but may make a cross in the circle at the left of the name of the candidate for whom he may wish to vote.

2062a. Instructions to judges. [Ch. 81, '99.] § 2. The judges in counting the votes shall endeavor to record the intention of the voter. Should there be a cross in the circle at the head of one ticket, the judges shall hold the intention of the voter to be to vote for all candidates on the ticket over which the cross is placed, unless should there be a cross in the circle at the left of the name of some candidate on some other ticket on the ballot. The judges shall then hold the intention of the voter to be to vote for the candidate before whose name he has placed a cross and for all candidates on the ticket over which he has placed a cross, except for the candidate for that office before whose name he has placed a cross on some other ticket.

2063. Questions, how submitted to the people. [Ch. 60, '97.] § 26. Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for adoption or rejection, the secretary of state shall duly and in not less than thirty (30) days before election, certify the same to the auditor of each county in the state, and the auditor of each county shall include the same in the publication provided for in section ten of this act. Questions to be submitted to the people of a county or municipality shall be advertised as provided for nominees for office by said election.

2064. Amendments to the constitution and other questions, now voted upon. [Ch. 60, '97.] § 27. That whenever a proposed amendment to the constitution or other questions are submitted to the people, the proposed amendment or questions shall be printed upon the ballot, followed by the words "shall the above amendment to the constitution in relation to or questions be approved and ratified?" immediately to the left of which shall be printed the words "Yes" and "No" each preceded by a square in which the elector can place a cross to indicate his vote. Electors desiring to vote "Yes" will place a cross before the word "Yes," and those desiring to vote "No," will place a cross before the word "No."

2064a. Ballots for constitutional amendment. [Ch. 80, '99.] § 1. In submitting to the voters, provisions for constitutional amendments, they shall hereafter be printed upon a separate ballot, and be delivered by the judges of election to each voter at the time he received the ballot upon which the names of the candidates appear, and such ballots shall be placed in a separate ballot box.

2065. Assistance of judges. [Ch. 60, '97.] § 28. Any elector who by reason of blindness or other physical disability, but for no other cause is unable to mark his ballot as required by law, shall receive the assistance of two of the judges of such election, belonging to two different political parties if two political parties are represented upon such board, by making application therefor, and subscribing to the following oath, setting forth the nature of such disability and which oath shall be in the following form and shall be upon blanks furnished by the county auditor, all of which oaths so subscribed shall be preserved by said judges and returned by them to the county auditor, and shall become a part of the permanent record of such auditor's office.

Form of oath. I....., being first duly sworn, depose and say that I am a legal voter of precinct county, and that I am unable to properly mark my ballot by reason of the following physical disability:

2066. False swearing. [Ch. 60, '97.] § 29. Any elector who shall falsely make any such affidavit as above required, or who shall swear to any facts not true in such affidavit shall be deemed to be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum of not less than ten dollars (\$10.00) nor more than one hundred dollars

(\$100.00) or shall be confined in the county jail for a period not exceeding six (6) months, or both such fine and imprisonment in the discretion of the court.

2067. Duty of judge administering oath. [Ch. 60, '97.] § 30. It is hereby made the duty of the judge of election administering such oath to first read the same aloud to such elector, together with the foregoing penalty, and for the purposes of carrying out the provisions of this section, the above penalty shall be printed upon the blanks provided by the auditor for taking such oaths. Said judges shall thereafter give no information regarding the manner in which any such ballot is marked.

2068. Ballot must be stamped. [Ch. 60, '97.] § 31. No judge of election shall deposit in any ballot-box any ballot upon which the official stamp as hereinbefore provided for does not appear. Every person violating the provisions of this section shall be guilty of a misdemeanor.

2069. Challenging votes. [Ch. 60, '97.] § 32. When any person shall make application for ballots, his right to vote at that poll and election may be challenged, and such proceedings shall thereupon be had before the judges of election as the law now prescribes in case of challenge. Any person may also be challenged as now provided by law, when he shall offer his ballot to the ballot clerk or the judge of election. A reasonable number of challengers, representing each political party, shall be permitted just outside the guard rail, where they can plainly see what is done within the polling place except at the voting shelves or within the compartment. The said polling place shall be so arranged, that every part thereof except the voting shelves or the inside of the compartments may be in full view of said challengers. The person voting shall mark and deposit without delay, and shall quit the said inclosed place as soon as he has voted. No voter shall be allowed to occupy a voting shelf or compartment already occupied by another, nor to remain within said inclosed space for more than ten (10) minutes. Nor shall he occupy a voting shelf or compartment for more than five (5) minutes. No voter, other than election officer, whose name has been checked on the list of the ballot officers, shall be allowed to re-enter said inclosed space during said election. It shall be the duty of the presiding election officer, for the time being, to secure the provisions of this section.

2070. Unused and canceled ballots to be returned to county auditor. [Ch. 60, '97.] § 33. If any voter spoils a ballot he may obtain another ballot, and so on successively, not to exceed three (3) ballots in all, upon returning to the ballot clerk the spoiled ballot. In obtaining a ballot to replace a spoiled one, the name of the voter shall be given and the number of the ballot so spoiled, which number shall be noted opposite his name as "spoiled." The ballots thus returned, shall be forthwith canceled by writing the word "canceled" across the face of the ballot; and the same, together with the ballots not distributed to voters, also the record of ballots delivered to voters by the

ballot clerks, shall be secured in a package, sealed and on the day after election sent to the county auditor or other public officer, or boards from whom such ballots were received. The ballot clerks shall also at the same time file with the county auditor of their respective counties, or with such other public officers or boards by whom such ballots were prepared, a statement in writing showing the number of ballots voted, the number of spoiled ballots and the number of ballots [not] delivered to voters. Any ballot clerk who shall fail to thus account fully and particularly for all official ballots placed in his charge shall be guilty of a misdemeanor. The county auditor or other public officer by whom the ballots were furnished, shall upon receipt of the unused, defective or spoiled ballots, and the statement, as before mentioned in this section, shall carefully compare the same with the record in his office of the number of ballots sent to such election precinct, district, town or ward; if they are not accounted for in the statement before mentioned, he shall at once notify the person sending the same, who shall, with such county auditor or other public officer as aforesaid, recount the unused, defective and spoiled ballots and correct, if possible, such errors if any there be in such count or statement.

2071. Instructions to voters. [Ch. 60, '97.] § 34. The county auditor of each county shall cause to be printed, in large type on cards in the English language and such other languages as may be deemed necessary, instructions for the guidance of electors in preparing their ballots. He shall furnish six such cards to the judges of election in each election precinct, and one additional card for each fifty (50) electors or fractional part thereof in the precinct at the same time and in the same manner as the printed ballots. The judges of election shall post no less than one of such cards in each place, or compartment provided for the preparation of ballots, and not less than three of such cards elsewhere in and about the polling places upon the day of election. Said cards shall be printed in large, clear type, and shall contain full instructions to the voters as to what should be done, viz.: First, to obtain the ballots for voting; second, to prepare the ballots for deposit in the ballot-boxes; third, to obtain a new ballot in place of one spoiled by accident or mistake. Said card shall also contain a copy of sections [25, 27, 28, 35] of this act. There shall also be posted in each of the apartments or booths one of the official tickets without the official stamp hereinbefore provided for, and not less than three such tickets posted elsewhere in and about the polling places upon the day of election.

2072. Ballots void, when. [Ch. 60, '97.] § 35. In the canvass of the vote any ballot which is not indorsed as provided in this act, by the official stamp, shall be void and shall not be counted, and any ballots or parts of a ballot from which it is impossible to determine the elector's choice, shall be void and shall not be counted; provided, that when the X marks on a ballot are sufficiently plain to gather therefrom a part of the voter's intention, that it shall be the duty of the judges of election to count such part.

2073. Change in any manner of certificate of nomination deemed felony. [Ch. 60, '97.] § 36. No person shall falsely make, or make oath to, or fraudulently deface, or fraudulently destroy any certificate of nomination, or any part thereof; or file, or receive for filing, any certificate of nomination, knowing the same or any part thereof to be falsely made, or suppress any certificate of nomination which has been duly filed, or any part thereof, or forge or falsely make the official indorsement on any ballot. Every person violating any of the provisions of this section shall be deemed guilty of a felony, and on conviction thereof in any court of competent jurisdiction shall be punished by imprisonment in the penitentiary for a period not less than one year nor more than five years.

2074. Wilful violation of law, how punished. [Ch. 60, '97.] § 37. No person shall, during the election, remove or destroy any of the supplies or other conveniences placed in the booths or compartments for the purpose of enabling the voter to prepare his ballot, or prior to or on the day of election, wilfully deface or destroy any list of candidates posted in accordance with the provisions of this act. No person shall, during an election, tear down or deface the cards printed for the instruction of the voters. Every person wilfully violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be fined in any sum not less than two hundred dollars.

2075. Wilful neglect of duty, how punished. [Ch. 60, '97.] § 38. Every public officer upon whom any duty is imposed by this act, who shall wilfully perform any act or thing herein prohibited, or neglect to perform any duty as imposed upon him by the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit his office and shall be punished by imprisonment in the county jail for a term of not less than one month nor more than six months, or by a fine of not less than fifty dollars nor more than five hundred dollars, or both such fine and imprisonment.

2076. Electioneering prohibited. [Ch. 60, '97.] § 39. No officer of election shall do any electioneering on election day. No person whatsoever shall do any electioneering on election day within any polling place, or any building in which an election is being held, or within fifty feet thereof, nor obstruct the doors and entries thereto, or prevent free ingress to and egress from said building. Any election [officer] sheriff, constable or other peace officer is hereby authorized and empowered, and it is hereby made his duty, to clear the passage-ways and prevent such obstruction, and to arrest any person so doing. No person shall remove any ballot from the polling place before the closing of the polls. No person shall show his ballot after it is marked to any person in such a way as to reveal the contents thereof, or the name of the candidate or candidates for whom he has marked his vote, nor

shall any person solicit the elector to show the same, nor shall any person except a judge of election receive from any elector a ballot prepared for voting. No elector shall receive a ballot from any other person than one of the judges of election having charge of the ballots, nor shall any person other than such judges of election deliver a ballot to such elector. No elector shall vote or offer to vote any ballot except such as he has received from the judges of election having charge of the ballots. No person shall make a false statement as to his inability to mark his ballot. No elector shall place any mark upon his ballot by which it may afterward be identified as the one voted by him. Every elector who does not vote a ballot delivered to him by the judge of election having charge of the ballots shall, before leaving the polling place, return such ballot to such judges. Whoever shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction, shall be fined in any sum not exceeding two hundred dollars (\$200.00) and adjudged to pay the cost of prosecution, and shall stand committed to the county jail until such fine and costs are paid, not exceeding six days.

2077. Employes may attend elections. [Ch. 60, '97.] § 40. Any person entitled to vote at any election held within this state shall, on the day of such election, be entitled to absent himself from any service or employment in which he is then engaged or employed, for a period of two (2) hours, between the time of opening and the time of closing the polls, and such voter shall not, because of so absenting himself, be liable to any penalty, nor shall any deduction be made on account of such absence from his usual salary or wages; provided, however, that application shall be made for such leave of absence prior to the day of election. The employer may specify the hours during which such employe may absent himself as aforesaid. Any person or corporation who shall refuse to an employe the privilege hereby conferred, or who shall subject an employe to a penalty or reduction of wages because of the exercise of such privilege or who shall directly or indirectly violate the provisions of this act, shall be guilty of a misdemeanor.

2078. Canvassing votes. [Ch. 60, '97.] § 41. The votes of the several candidates shall be canvassed, in the order in which they occur upon the several ballots. None but the official ballots shall be counted, except such as are voted in accordance with section nineteen of this act. All ballots that are defective shall be so marked and accounted for as hereinbefore provided in this act.

2079. This act not applicable, when. [Ch. 60, '97.] § 42. This act shall not apply to elections to public offices determined otherwise than by ballot, nor to election of school officers, when no other officers are to be chosen at the same election, nor to the election of township officers.

2080. Wilful misconduct of officer. [Ch. 60, '97.] § 43. Any public officer upon whom a duty is imposed by this act, who shall wilfully neglect to perform such duty, or who shall wilfully perform it in such a way as to hinder the objects of this act, shall be punished by a fine of not less than one hundred (100) dollars, or more than five hundred (500) dollars, or by imprisonment in jail for not more than one (1) year, or by both such fine and imprisonment. Any person having charge of official ballots, who shall destroy, conceal or suppress them, except as in this act permitted, shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state's penitentiary not less than one (1) year nor more than three (3) years.

2081. Pamphlet to be published and distributed. [Ch. 60, '97.] § 44. It shall be the duty of the secretary of state to cause to be published in pamphlet form and distributed through the county auditors of the respective counties a sufficient number of copies of this law, together with the registration law of the state, if any, and such other laws as bear upon the subject of election, as will place a copy thereof in the hands of all officers of election.

ARTICLE 2. CONTESTING ELECTIONS.

GENERAL.

2082. Notice, how served. Any candidate or person claiming the right to hold an office contested, or any elector of the proper county desiring to contest the validity of an election or the right of any person declared duly elected to any office in said county, shall give notice thereof in writing to the person whose election he intends to contest, within twenty days after the canvass of the votes for such election, which notice shall be served in the same manner as a summons in a civil action. But if the person whose election is contested cannot be found and shall have ceased to have a residence in said county or state, then the notice shall be served by leaving said notice at the house where such person last resided in the state of South Dakota, and if no service as above provided can be made or if no such residence can be found in the state, the circuit court or judge thereof may expressly direct the manner of service, which notice of contest shall be in writing and shall set forth the facts and grounds upon which the contestant relies in his contest, and may be verified as a pleading in a civil action. [C. L. 1489.]

The word "canvass," construed to include decision of a tie vote by the clerk or auditor as provided by section 26, chs. 84, 90. *Bowler v. Eisenhood*, 1 S. D. 557; 48 N. W. Rep. 136.

2083. Answer. Any person upon whom the notice mentioned in the preceding section may be served shall within ten days after the service thereof answer such notice, admitting or denying the facts alleged therein, and state any other grounds upon which he rests the validity

of his election, and shall serve a copy of his answer in the contest, and all allegations set forth in the notice and not denied in the answer shall be taken as admitted, and said answer shall be served in the manner provided in the preceding section, except where the contestant appears by attorney, in which case the answer shall be served on the attorney in the manner provided by the code of civil procedure. [C. L. 1490.]

2084. By whom brought. The contest provided for in this act may be brought by a candidate or person claiming said office, on his own motion, in his own name as plaintiff, but such contest cannot be brought by an elector without the notice is signed by the district attorney of the proper county, or upon his refusal so to sign said notice of contest the contest may be allowed by the court or judge thereof. [C. L. 1491.]

To authorize candidate or person to institute contest he must state facts in notice which would entitle him to the office and he must claim a right to the office. *Batterton v. Fuller*, 6 S. D. 257; 60 N. W. Rep. 1171.

If it fails to so state, does not give court jurisdiction. *Id.*
Amendment forty days after the canvass, is barred by the statute. *Id.*

2085. Trial. The judge of the circuit court of the subdivision in which said county is situated, in case no term of said court occurs within twenty days after the said answer is served, may appoint a term of said court in said subdivision; but if a term of court occurs before that time in said subdivision then the contest shall be tried at that term, unless otherwise ordered by the court or judge thereof. But the circuit court or judge upon ten days' notice by either party, may try the case at the chambers of the judge at any place fixed by said court or judge of said district; or he may on such application or his own order, if the pleadings involve a question of fact, order such issues of fact to be tried before a jury, or refer the same as provided in this act, and postpone the trial until such trial can be had in any county in his district, regard being had to the speediest possible trial for the interest of the parties and of the public. The question to be tried, if the issues are ordered to be tried by a jury, must be distinctly stated in the order of trial, and the county or subdivision must be designated in the order in which the trial shall be had. [C. L. 1492.]

2086. Testimony and procedure. All testimony and depositions taken in contests brought under the provisions of this act shall be taken in the same manner as civil actions, and depositions may be taken in more than one place at the same time on leave of the court or judge thereof, and all matters relating to the said contest shall be heard and tried by the district court or judge thereof in the manner that civil actions are tried, except as otherwise provided in this act, and the costs shall be taxed in the same manner as in civil actions, and the court or judge thereof shall have all the power of ordering amendments to notice and answers and other proceedings as provided in the code of civil procedure, and the court or judge thereof shall have power to enter all orders

and final judgment in such contests the same as in civil actions. [C. L. 1493.]

2087. County seat removal. In any county where there is a vote for the election or for the removing or changing of the county seat of such county, or changing the county lines of said county, any elector thereof on leave of the circuit court or the judge may contest the validity of such election as to the right of the point declared and selected as the county seat, or as to any county line declared to be established or changed by a vote; such elector shall give notice in writing of such contest to the county commissioners or a majority of them of the county in which said vote was taken, by serving notice of contest as provided in section fourteen hundred and eighty-nine, within thirty days after the result of said vote is canvassed. Said notice shall specify the points on which such election will be contested, and said notice shall be filed with the clerk of the circuit court where such court is held for the judicial subdivision of which said county forms a part, within ten days after the service of said notice upon the county commissioners as aforesaid, and the said contest shall be tried and determined by the circuit court or judge thereof, or by a jury as provided for in this act in the contest of county officers; such county commissioners shall appear and defend said contest and put in an answer to said notice as is provided for in section fourteen hundred and ninety; but if they fail to appear and defend said contest any elector of said county at any time before said trial may on leave of the court or judge appear and defend said contest; and all testimony and depositions shall be taken in the same manner as in civil actions. [C. L. 1494.]

Elector may maintain action to set aside removal of county seat, where election is held under an invalid law. *Adams v. Smith et al.*, 6 S. D. 94; 50 N. W. Rep. 20.

2088. Contest tried by referee. All contests brought under the provisions of this act may be referred by the court or the judge thereof to a referee as provided in the code of civil procedure, and where the parties do not consent the court or judge thereof may direct a reference of such contest. [C. L. 1495.]

2089. Surety for costs. Any person bringing a contest under the provisions of this act must before bringing the same furnish good and sufficient surety for costs as provided in the code of civil procedure, and the obligation of such surety shall be completed by simply indorsing the notice of contest as security for the costs. [C. L. 1496.]

2090. Appeals. Appeals from any final judgment or decision of the circuit court or judge thereof shall be taken in the manner as provided for in the code of civil procedure, except that the undertaking on appeal shall be in the sum fixed by the judge, not less than five hundred dollars, and shall be approved by the judge or by the clerk of the court of the proper county or subdivision under the direction of the judge. [C. L. 1497.]

2091. Appeal to supreme court. Appeals to the supreme court in contests under the provisions of this act must be taken within sixty days after the entry of final judgment, and the party appealing must immediately procure the transmission of the transcript and papers of appeal to the clerk of the supreme court, and the same may be brought on for hearing and determination before the supreme court at any time the said court shall be in session, upon ten days' notice from either party; and the same shall be heard and determined in a summary manner; such notice of hearing may be served during a term or in a vacation. [C. L. 1498.]

2092. Construction of this act. This act shall not be construed to affect any of the remedies or rights of action or proceedings provided for in the code of civil procedure. [C. L. 1499.]

2093. What provisions apply. Except as otherwise provided in this act, the provisions of part two of the code of civil procedure are applicable and constitute the rules of practice in the proceedings mentioned in this act. [C. L. 1500.]

2094. What applies to new trials. The provisions of part two of the code of civil procedure relative to new trials and appeals, except in so far as they are inconsistent herewith, apply to proceedings mentioned in this act. [C. L. 1501.]

CONTESTING STATE OFFICES.

2094a. Recount of votes. [Ch. 82, '99.] § 1. That in case of any contest or question as to illegal voting in any precinct, upon application by contestant to the circuit court, an order may be made directing a recount of the votes in each and all precincts questioned by the contestant; and immediately after filing the answer, the contestee may at any time make application to the circuit court for a recount of the ballots. The votes shall be recounted by the county auditor and by two persons named by the court, one from the political party of the contestant named by him, and the other from the political party of the contestee named by him and in the presence of the contestant and contestee and their attorneys. After a recount it shall be the duty of the county auditor to issue a certificate of election to the person who has the greatest number of votes as shown by the recount.

2094b. Notice of contest. [Ch. 82, '99.] § 2. Any candidate or person, claiming the right to hold a state office, desiring to contest the validity of an election or the right of any person declared duly elected to any state office, shall give notice thereof, in writing to the person whose election he intends to contest within twenty days after the canvass of the votes for such election, which notice shall be served in the same manner as a summons in a civil action, where personal service can be had, but if personal service cannot be had upon the contestee, the notice of contest shall be served in a manner to be directed by a judge of the supreme court on application to him, setting forth the facts that personal service cannot be made upon contestee, and

the facts and grounds upon which the contestant relies to substantiate his contest.

2094c. Answer. [Ch. 82, '99.] § 3. Any person, upon whom, the notice mentioned in the preceding section is served, shall, within ten days after the service thereof, answer such notice, admitting or denying the facts alleged therein and state any other grounds upon which he rests the validity of his election, and shall serve a copy of his answer in the contest; and all allegations set forth in the notice and not denied in the answer, shall be taken as admitted; and said answer shall be served in the manner provided in the preceding section, except where the contestant appears by attorney, in which case, the answer shall be served upon the attorney in the manner prescribed by the code of civil procedure for serving answers.

2094d. Depositions. [Ch. 82, '99.] § 4. All testimony or depositions, taken in contests brought under the provisions of this act shall be taken in the manner provided for in civil actions; and depositions may be taken in more than one place at the same time on leave of the court or judge thereof, and all matters relating to the said contest shall be held and tried by the supreme court; and the costs shall be taxed in the same manner as in civil actions and the court shall have power of ordering amendments to the notice and to the answer and other proceedings as provided for amendments in the code of civil procedure, and the court shall have power to enter all orders and judgments the same as in civil actions.

2094e. Surety for costs. [Ch. 82, '99.] § 5. Any person bringing a contest under the provisions of this act, must before bringing the same furnish good and sufficient surety for costs as provided in the code of civil procedure; and the obligation of such surety shall be completed by simply endorsing the notice of the contest as surety for the costs and the contestee may except to the surety as insufficient and the court may require additional surety.

2094f. Rules of practice. [Ch. 82, '99.] § 6. The rules applicable to trial in civil cases shall be applied in contests under this act and witnesses and officers fees shall be the same.

2094g. Depositions forwarded. [Ch. 82, '99.] § 7. Depositions, taken under and by virtue of this act, shall be sealed and forwarded to the clerk of the supreme court in the same manner as depositions are now required to be sealed and forwarded to the clerk of the circuit court in civil actions.

2094h. Application for recount. [Ch. 82, '99.] § 8. Immediately after the serving of the notice of contest, the contestant may upon five days notice to the contestee, make application to the supreme court for an order to be issued directing a recount of the ballots, and the contestee may at any time after filing the answer, make like application to the supreme court for a recount of the ballots in any or all

counties of the state. At the time of serving notice of intention to apply for such order, the contestant shall serve upon the contestee an affidavit setting forth the grounds and facts upon which he bases his contest, and the grounds for belief that a recount would change the result of the election as shown upon the face of the returns. The court may, in its discretion, grant an order directing a recount of the ballots in any or all counties of the state. When the recount is ordered it shall be made by and in the presence of the county auditor, together with one person appointed by the court from the political party of the contestant named by him, and one person appointed by the court from the political party of the contestee named by him, and in the presence of the contestant and contestee and their attorneys, and after the said recount has been made, the county auditor shall replace the ballots in the ballot box and carefully preserve them until the contest is finally disposed of, and certify up to the secretary of state the result of the recount and the number of ballots not counted and the grounds for refusing to count them.

2094i. Custodian of ballots. [Ch. 82, '99.] § 9. From the time that the returns of the various judges of election are filed with the county auditor, the county auditor shall be the custodian, and shall be held responsible for the safe-keeping of the ballots and the returns of the various judges of election, and if he shall efface or destroy any of the ballots or returns so made, or carelessly neglect to carefully preserve them by the best safeguards within his control, as such county auditor, he shall on conviction therefor, be fined in a sum not exceeding five hundred dollars (\$500) and imprisoned in the state prison for a term not exceeding five years, and the court may impose either or both such fine and imprisonment.

2094j. Duty of returning board. [Ch. 82, '99.] § 10. The secretary of state, after receiving the certificates of the result of the recount from the various county auditors of the counties in which a recount is ordered, shall notify the returning board to reconvene within five days after receipt of the said certificates of the recount, and the returning board shall proceed to ascertain the number of votes cast for the contestant and the contestee, as shown by the recount, and shall issue a certificate of election to the one having the highest number of votes.

CONTEST OF LEGISLATIVE ELECTIONS.

2095. Notice. Whenever any person intends to contest an election of any member of the legislative assembly of the state of South Dakota, he may within ten days after the result of such election shall have been determined by the officers or board of canvassers authorized by law to determine the same, give notice in writing to the member whose seat he designs to contest, of his intention to contest the same, and in such notice shall specify particularly the grounds upon which he relies in the contest. [C. L. 1502.]

2096. Answer. Any member upon whom the notice mentioned in the preceding section may be served, shall within ten days after the service thereof answer such notice, admitting or denying the facts alleged therein and stating specifically any other grounds upon which he rests the validity of his election, and shall serve a copy of his answer in the contest; and all allegations set forth in the notice not denied in the answer shall be taken as admitted. [C. L. 1503.]

2097. Limitations. In all elections in any council or representative district at which any member of the legislative assembly is elected, the officers or board of canvassers whose duties it is to canvass the returns of said district shall do so within twenty days from said election, and the canvass for county officers shall take place within fifteen days after said election. [C. L. 1504.]

2098. Testimony taken, when. In all contested election cases the contestant may begin to take testimony as soon as the notice specified in section fifteen hundred and two is served; and the returned member may take testimony as soon as his answer is served; and both parties to said contest may continue to take testimony for ten days after the time for serving the answer of the returned member has expired, after which time the contestant may take testimony in rebuttal only for five days. [C. L. 1505.]

2099. Depositions — notice. The party desiring to take a deposition under the provisions of this chapter shall give the opposite party notice in writing of the time and place when and where the same will be taken, of the names of the witnesses to be examined and their place of residence, and the name of an officer before whom the same will be taken. The notice shall be personally served upon the opposite party, or by any agent or attorney authorized by him to take testimony or cross-examine witnesses in the matter of such contest. If by the use of reasonable diligence personal service cannot be made, the service may be made by leaving a copy of the notice at the usual place of abode of the opposite party. The notice shall be served so as to allow the opposite party sufficient time by the usual routes of travel to attend, and one day for preparation exclusive of Sundays and the day of service. [C. L. 1506.]

2100. Places to take testimony. Testimony on contested election cases under this chapter shall not be taken at more than two places at the same time by either party. [C. L. 1507.]

2101. Subpoenas applied for. When any contestant or returned member is desirous of obtaining testimony respecting a contested election, he may apply for a subpoena to any officer having a seal, or any justice of the peace for any county where the testimony is to be taken. [C. L. 1508.]

2102. Subpoenas authorized. The officer to whom the application authorized by the preceding section is made shall thereupon issue his writ of subpoena directed to all such witnesses as shall be named to him, requiring their attendance before him at some time and place named in the subpoena, in order to be examined respecting the contested election. [C. L. 1509.]

2103. Depositions without notice. It shall be competent for the parties, their agents or attorneys authorized to act in the premises, by consent in writing to take depositions without notice. Any written consent given as aforesaid shall be returned with the depositions. [C. L. 1510.]

2104. Subpoenas served. Each witness shall be duly served with a subpoena by a copy thereof delivered to him or at his place of abode. [C. L. 1511.]

2105. Attendance in county only. No witness shall be required to attend an examination out of the county in which he may reside, or be served with a subpoena. [C. L. 1512.]

2106. Penalty for failure to appear and testify. Any person who having been summoned in the manner above described refuses or neglects to attend and testify, unless prevented by sickness or unavoidable necessity, shall forfeit the sum of twenty dollars, to be recovered with costs of suit by the party at whose instance the subpoena was issued and for his use, by action of debt, and shall also be liable to an indictment for a misdemeanor and punishment by fine and imprisonment. [C. L. 1513.]

2107. Non-resident witnesses. Depositions of witnesses residing outside of the district and beyond the reach of subpoena may be taken before an officer authorized to take testimony in civil actions. [C. L. 1514.]

2108. Examination of witnesses. All witnesses who attend in obedience to a subpoena, or who attend voluntarily at the time and place appointed, of whose examination notice has been given as provided by this chapter, shall then and there be examined on oath by the officer who issued the subpoena, or in case of his absence by any other officer who is authorized to issue such subpoena, or by the officer before whom the depositions are to be taken by written consent, as the case may be, touching all such matters respecting the election about to be contested as shall be proposed by either of the parties or their agents or attorneys. [C. L. 1515.]

2109. Evidence confined to issue. The testimony to be taken by either party to the contest shall be confined to the proof or disproof of the facts alleged or denied in the notice and answer mentioned in sec-

tions fifteen hundred and two and fifteen hundred and three. [C. L. 1516.]

2110. Testimony must be written. The officer shall cause the testimony of the witnesses to be reduced to writing in his presence and in the presence of the parties or their agents or attorneys, if attending, to be duly attested by the witnesses respectively. [C. L. 1517.]

2111. Production of papers. The officer before whom any deposition is taken shall have power to require the production of papers; and on the refusal or neglect of any person to produce and deliver up any paper or papers in his possession pertaining to the election, or to produce certified or sworn copies of the same in case they may be official papers, such person shall be liable to all the penalties prescribed in section fifteen hundred and thirteen. All papers thus produced and all certified or sworn copies of official papers shall be transmitted by the officer, with the testimony of the witnesses, to the secretary of the state for the use of the legislative assembly. [C. L. 1518.]

2112. Adjournments. The taking of the testimony may, if so stated in the notice, be adjourned from day to day. [C. L. 1519.]

2113. Documents to be attached. The notice to take depositions, with the proof or acknowledgment of the service thereof, and a copy of the subpoena where any has been served, shall be attached to the deposition when completed, together with a copy of the notice of contest and answer of the returned member, which shall be annexed to the depositions taken and transmitted with them to the secretary of the state. [C. L. 1520.]

2114. Testimony forwarded to secretary of state. All parties taking testimony to be used in a contested election case, when the taking of the same is completed and without unnecessary delay, shall certify and carefully seal and forward the same to the secretary of the state, by mail, and shall indorse on the same the title of the same; and the secretary is hereby authorized to open the same at the instance of either party, his agent or attorney. [C. L. 1521.]

2115. Fees of officers and witnesses. Every witness attending by virtue of any subpoena herein directed to be issued, and all officers who may be employed in taking testimony in contested election cases under this act, or serving any subpoena or notice herein authorized, shall be entitled to receive from the party at whose instance the service or attendance shall have been performed such fees as are allowed for similar service in civil actions in courts of record in this state. [C. L. 1522.]

2116. No legislative expense. No payment shall be made by the legislative assembly out of its contingent fund or otherwise to either party to a contested election case, for expenses incurred in prosecuting or defending the same. [C. L. 1523.]

ARTICLE 3. CAUCUSES AND PRIMARY MEETINGS.

2117. Who may vote. It shall be unlawful for any person not a qualified elector of the ward or election precinct in which any caucus or primary meeting is held, having for its object either immediately or ultimately the nomination or selection of any delegate or candidate for any public office to be voted on at any election in this state, to vote in any manner or on any question which may come before such caucus or primary meeting. Any person who shall violate the provisions of this act shall be deemed guilty of a misdemeanor, and shall be punished according to law. [C. L. 1524.]

REGISTRATION LAW.

2118. Who may vote. [Ch. 86, '99.] § 1. No person in the state of South Dakota shall be permitted to vote at any general election unless he is duly registered as herein required.

2119. Definition. [Ch. 86, '99.] § 2. A general election within the meaning of this act, is any election at which a vote is required to be taken in every voting precinct of the state.

2120. Registration required. [Ch. 86, '99.] § 3. There shall be in the year 1899 a registration of the qualified electors of this state. The mayor, clerk and treasurer of every incorporated city, the chairman of the board of trustees, clerk and treasurer of every incorporated town or village, the board of supervisors of every organized civil township and in voting precincts where there is no organized civil townships the judges of election last appointed shall constitute a board of registration for such city, town, village, township or voting precinct. The county commissioners of each county shall provide suitable bound books or registers, one for each voting precinct in their county, so made and arranged as to contain an alphabetical list of the respective names, Christian and surnames of all the persons declared by the constitution of the state to be electors and entitled to vote, residing in such voting precinct, and the date of said registration, and of the electors who reside in the city or incorporated village, the residence of each shall be given by number or dwelling, if any and the name of the street and if not, a description of the locality of the same, and of the electors of each township, the quarter section upon which the voter resides shall be given.

2121. Duty of assessor and other officers. [Ch. 86, '99.] § 4. The assessor, charged by law with the assessment of the property for any city, village or township and of the property not included in any city, town, village or township organized for civil purposes, for the purpose of taxation, shall, while making such assessment, and in connection with the performance of his duty, have with him such register and shall allow each qualified elector, whom he assesses to write his name

in such register at the proper place, or shall himself at the time of making the assessment of the property of any elector, write the name of the said elector in said register as herein provided; and shall after completing the valuation of the property and on or before the first day of July, return said register to the town, township, village or city clerk or city auditor who shall carefully keep and preserve the same in his office and in voting precincts not included in townships organized for civil purposes, the assessor shall return said register to the county auditor, who shall carefully preserve the same. The city, town, village or township clerk, and in the case of voting precincts in unorganized townships, the county auditor shall have authority and it is hereby made his duty to prepare a full and complete list of all the voters in the unorganized precinct of which county he is such officer, using for this purpose the list filed with him by the assessor as provided in this act; also the poll list of the last preceding general election, which it is hereby made his duty to procure from the office in which it is on file; also the registry list used at the last preceding general election, striking from such poll and registry lists the names of all persons whom he shall know to have died or removed, and adding thereto the names of all persons whom he may know to be legal voters in his precinct and whose names are not included in any of said lists. Such completed list shall be posted by such city, town, village or township clerk in three of the most public places in the precinct, one of which shall be upon the door of the building in which the election is to be held, on or before the third Tuesday next preceding said election, and in case of voting precincts in unorganized townships, three copies of the list of voters of such voting precinct shall be mailed by the county auditor to one of the judges of election last appointed for such voting precinct at least thirty days prior to such general election, which list shall be posted by such judge of election at least twenty days prior to such election in the same manner as provided in case of organized townships. Any person who shall take down, tear down or deface or destroy any list so posted, shall be guilty of felony, and shall be punished by a fine not exceeding five hundred dollars (\$500) or by imprisonment not to exceed five years, and the court may in its discretion impose both fine and imprisonment.

2122. Board of registration — duties. [Ch. 86, '99.] § 5. The board of registration as herein provided shall meet on the last Tuesday next preceding the day of election at nine o'clock in the forenoon of said day, which date is hereby made the date of the last regular meeting of the board of supervisors for organized townships for each calendar year, and continue in session until six o'clock in the afternoon at the place where the election is to be held, in said township or voting precinct, except in cities, towns and villages, and there the meeting shall be held at the usual place of meeting of the city council or board of trustees and proceed to correct the registered list as returned by the assessor as herein prescribed, of all the persons entitled to vote

at the ensuing election in their election precincts, which list when completed, shall constitute and be known as the register of electors of the said election precincts.

2123. Further duties. [Ch. 86, '99.] § 6. It shall be the duty of said board to enter in said lists the names of all persons residing in said precinct, whose names appear in the poll list kept in the said precinct at the last preceding election, if the same shall be known to, or can be ascertained by such board to be qualified electors of the said precinct, and for this purpose said boards are directed to examine the register of electors and also the poll lists made and filed by the judges of such precinct at the election held next prior to the making of such register. In making such register the board shall enter thereon, in addition to names on the poll lists, the names of all other persons who are well known to them to be electors in said precinct, or shall be proved to be electors upon the sworn affidavit of the person applying to be registered, or upon the affidavit of some elector whose name has already been placed upon the poll list, and the names of all persons on the poll list who have died or removed from the precinct shall be omitted from the register. The board of registration shall have the power, and it shall be their duty, and it shall be the duty of each of them individually when acting as a board of registration, to question every person presenting himself for registration, touching his residence and his other qualifications as an elector of his voting precinct, and the board may, for the more perfect examination of the applicant, swear and employ an interpreter thoroughly and impartially to interpret such questions and answers put to the applicant, after he has been duly sworn, to make true answers to the questions put to him.

2124. Proceedings to be open. [Ch. 86, '99.] § 7. The proceedings of said board shall be open, and all persons residing in and entitled to vote in said precinct shall be entitled to be heard by said board in relation to corrections or additions to said register.

2125. Correction of list — penalty for violation. [Ch. 86, '99.] § 8. It shall be the duty of the said board to erase from said registered list the name of any person inserted therein who shall be proved by the affidavit of two legal voters of the said precinct, to the satisfaction of the said board, to be a non-resident or otherwise not entitled to vote, at said election next to be held. And any elector residing at said precinct and entitled to vote therein may appear and require his name to be entered in said list. Any person appearing at an election shall be subject to challenge either by the judges or inspectors at said election or by any other elector whose name appears upon said registered list, and the same affidavit shall be required and may be administered by any judge of election which is now or may hereafter be provided to be made by a person offering to vote at an election. Any person making a false statement in relation to his qualifications as an elector at

said election shall upon conviction therefor be fined in a sum not exceeding five hundred dollars or imprisoned in the state prison not exceeding three years, and the court may in its discretion impose both such fine and imprisonment. And for the violation of any of the provisions of this act by any registration officer, he shall be subject to a like fine and imprisonment.

2126. Use of list. [Ch. 86, '99.] § 9. After said registered list shall have been fully completed, said board shall within two days cause two copies of the same to be made, each of which shall be certified by them to be a correct list of the voters of their precinct so far as known, of which said list one shall be delivered to a judge of the election precinct at least one day before the election for which said registered list is prepared, and the other shall be delivered to the county auditor at least three days prior to the day of election. The election board shall return to the city, town, village or township clerk, and in precincts outside of townships not organized for civil purposes, to the county auditor, the registered list used by said election board on the day of election, which shall be retained and carefully preserved by said clerk as a public record and shall at all times be open to public inspection. The county auditor shall make a copy of the list of voters of each election precinct in his county as returned by the various clerks from each election precinct and registration boards, and shall certify a copy of the same to the secretary of state prior to the day of election. No vote shall be received at any election in the state if the name of the person offering the vote be not on the said registered list. Unless such person offering the vote shall furnish to the judges of election his affidavit in writing stating therein that he is an inhabitant of said precinct and giving his place of residence and time he has resided therein and also shall state the reason why he was not registered and also shall prove by the affidavit of two of the electors registered by the assessor at the time of making the assessment of property and returned by him as hereinbefore provided, that they know such person to be an inhabitant of the said precinct, giving his place of residence and length of time he has resided therein. These affidavits may be sworn to before one of the judges of election where the vote is offered, or by any other person authorized to administer oaths. All affidavits herein provided for shall after being made, be preserved and filed by the judges of election and forwarded to the county auditor with the ballots and any person swearing to any statement of fact in such affidavit which is not true, shall upon conviction therefor be fined in a sum not exceeding five hundred dollars (\$500) or imprisoned in the state prison not exceeding three years, and the court may in its discretion impose both such fine and imprisonment.

2127. Expenses paid. [Ch. 86, '99.] § 10. The members of the board of registration and every officer required to perform any service under this act shall be paid all necessary expenses incurred.

2128. Powers of board. [Ch. 86, '99.] § 11. The board of registration shall have and exercise the same power in preserving order under this act as are given to judges of election on election day, and vacancies may be filled in said boards in the same manner as vacancies in boards of judges of election.

2129. Penalty. [Ch. 86, '99.] § 12. Any person who shall cause his name to be registered in more than one election precinct, or who shall cause his name to be registered, knowing he is not a qualified voter in the precinct where said registration is made, or shall falsely personate any registered voter, and any person aiding or abetting him in any manner in either of said acts, shall be punished for each and every offense by imprisonment in the state prison for not less than two or more than five years. If any member or officer of the said board, or any judge or clerk of election shall wilfully violate any of the provisions of this act, or be guilty of any fraud in the execution of the duties of his office, he shall upon conviction thereof be punished by imprisonment in the state prison not less than one or more than five years.

2130. False statement. [Ch. 86, '99.] § 13. Any false statement, representation or token made or used in the presence and to the knowledge of a person requesting his name to be registered at the time of offering his vote at an election is to be deemed made by himself, if it appears it was made or used in support of his claim to be registered or to be entitled to vote which he knew to be false and suffered it to pass uncontradicted.

2131. False poll book. [Ch. 86, '99.] § 14. Any person who shall at any election knowingly keep a false poll list, or knowingly insert any name in said list contrary to the provisions of this act, or make any false statement in said list, shall on conviction therefor be punished by imprisonment in the state prison for not less than one nor more than five years.

INITIATIVE AND REFERENDUM — STATE.

2132. Measures — how proposed. [Ch. 93, '99.] § 1. All measures proposed to the legislature under the initiative, shall be presented by petition, which petition shall be signed by not less than 5 per cent of the qualified electors of the state, and each elector shall add to his

signature his place of residence, his business and his post office address. The petition shall be filed in the office of the secretary of state, and upon the convening of the legislature, the secretary of state shall transmit to the senate and house of representatives certified copies of all of said petitions which may be on file in the office of the secretary of state at the convening of said legislature; and whenever a measure is proposed during the session of the legislature it shall be transmitted by the secretary of state forthwith to the senate and house of representatives, and the legislature shall enact and submit all of such proposed measures to a vote of the electors of the state at the next general election.

2132a. Becomes a law — when. [Ch. 93, '99.] § 2. If a majority of all the votes cast both for and against the measure so enacted and submitted, be for the measure, it shall then become a law of the state of South Dakota, and shall go into effect and be in force immediately after the result shall have been determined by the officers authorized by law to determine the same.

2133. Laws submitted to vote. [Ch. 93, '99.] § 3. Any laws which the legislature may have enacted, except laws which may be necessary for the immediate preservation of the public peace, health and safety, support to the state government and its existing institutions, shall, upon the filing of the petition as hereinafter provided, be submitted to a vote of the electors of the state at the next general election. Said petition shall be signed by not less than 5 per cent of the qualified electors of the state, and each elector shall add to his signature his place of residence, his business and post office address, which petition shall be filed in the office of the secretary of state within ninety days after the adjournment of the legislature which passed such laws, and if a majority of all the votes cast both for and against the law, be for the law, it shall then become a law of this state, and shall go into effect and be in force immediately after the result shall have been determined by the officers authorized by law to determine the same.

2133a. Form of ballot. [Ch. 93, '99.] § 4. Whenever a measure or law of the legislature is submitted to the electors, the said measure or law shall be printed upon a separate ballot from that upon which the names of the candidates for office are printed, but all measures and laws of the legislature to be voted upon at the same election shall

be printed upon one ballot, and each measure and law shall be followed by the words: "Shall the above measure or law (as the case may be) become a law of this state." Immediately to the left of which shall be printed the words, "Yes" and "No," each preceded by a square in which the elector may place a cross within such square to indicate his vote. Each elector desiring to vote "Yes" may place a cross within the square before the word "Yes," and those desiring to vote "No" may place a cross within the square before the word "No," and the secretary of state shall prepare and certify to the county auditor of each county the measures and laws to be voted upon at such general election in the manner and at the same time he certifies to said auditor certificates of nominations for general elections, and it is hereby made the duty of the board of state canvassers to canvass the returns of votes cast for these measures and laws, and to declare the result in the same manner and at the same time as other returns are canvassed, and the result declared by said board of state canvassers for state officers.

2133b. Per cent.—how determined. [Ch. 93, '99.] § 5. The total number of votes cast at the last preceding general election, shall be, for the purpose of this act, the basis upon which the 5 per cent of the electors shall be determined and the vote upon which said basis shall be made, shall be the vote cast for governor at such general election.

2133c. Petition. [Ch. 93, '99.] § 6. Every petition to propose a measure must contain the substance the initiative law desired, and must be signed in person by the petitioners, and every petition to submit a law to a vote of the electors of the state must be signed in person by the petitioners and must describe in said petition the law desired to be submitted by setting forth its title, together with the date of its passage and approval.

2133d. Who may sign. [Ch. 93, '99.] § 7. Every person who is a qualified elector may sign a petition to propose a measure or submit a law, and any person signing any name other than his own to said petition, or any person signing such petition who is not a qualified elector of this state, shall, upon conviction therefor, be fined in any sum not to exceed five hundred dollars, (\$500) or may be imprisoned in the state penitentiary for a term not to exceed five years, and the court may, in its discretion impose both such fine and imprisonment.

2133e. Municipal acts go into effect when. [Ch. 94, '99.] § 1. No law, ordinance or resolution, having the effect of law, for the government of any city or town passed by the legislative body or bodies thereof, except such as are for the immediate preservation of the public peace, or the public health, or safety, or expenditure of money in the ordinary course of the administration of the affairs of such public corporation, shall go into effect until twenty days after the passage of such law, ordinance or resolution, and the words law, ordinance or resolution used in this act mean ordinances, resolves, orders, agreements, contracts, franchises and any measure which it is in the power of the law makers or the electors of any municipality to enact.

2133f. Petition to be filed. [Ch. 94, '99.] § 2. The qualified electors residing in any city or town, may within the said twenty days file a petition with the auditor, or other proper officer or clerk thereof, requiring him to submit any such law, ordinance or resolution, to a vote of the electors of the political sub-division effected thereby for its rejection or approval, at a special election to be held within thirty days immediately following the filing of said petition. Provided, that in all cases where such petitions are filed at any time, not more than three months immediately prior to any election held for the purpose of electing the officers of said city or town, such law, ordinance or resolution shall be submitted at such election, provided such petitions are filed within sufficient time to give the notice above prescribed.

2133g. Contents of petition — per cent determined. [Ch. 94, '99.] § 3. That if the matter intended to be covered by said petition is the whole of said law, ordinance or resolution, said petition shall contain the title of the said law, ordinance, or resolution to be voted on by the electors, and the date of the passage of said law, ordinance or resolution by the legislative body of said municipal corporation but if a portion of said law, ordinance or resolution is only intended to be covered by the said petition, then the said petition shall contain the title of said law, ordinance or resolution, the date of its passage, following which that portion of said law, ordinance or resolution intended to be covered by said petition, shall be set out at length, and said petition, to be mandatory, shall be signed by at least five per centum of the legal voters residing in such city or town, the percentage to be based on the whole number of votes cast for the

highest executive officer in said city or town, at the election immediately preceding the filing of said petition, which said petition shall conform substantially to the provisions of section 2 and each elector signing the same, shall after his name state his occupation, residence and postoffice address.

2133h. Form of oath. [Ch. 94, '99.] § 4. That an oath shall be made before a duly qualified officer by at least five voters signing said petition, or if more than one, each petition, to the effect that said petition is made in good faith, and that the affiant verily believes all the signatures to be genuine, and those of duly qualified voters, which said oath shall be substantially and in the following form:

STATE OF SOUTH DAKOTA, }
 County of..... } ss.:

.....being duly sworn, on their oaths, respectively. do say that the foregoing petition is made in good faith, and that they verily believe all the signatures thereto to be genuine, and those of duly qualified voters.

2133i. Law to be published. [Ch. 94, '99.] § 5. It shall be the duty of the auditor, or clerk, of the said city or town to cause the entire law, ordinance or resolution set forth in said petition to be advertised in one of the newspapers published in such municipal corporation at least five days prior to such election, which publication shall be daily until such election in one daily paper published within said municipal corporation, but if there is no daily newspaper published within such municipal corporation one publication in a legal newspaper published in said municipal corporation not less than five nor more than twelve days prior to such election, shall be sufficient: Provided, if there is no newspaper published in such municipal corporation, then the auditor or clerk shall publish such law, or ordinance or resolution, by posting or causing to be posted the entire law, ordinance or resolution at least five days prior to the date of said election at three public places within the limit of each voting precinct of said city or town. Provided, further, that the publication of said law, ordinance or resolution in the said newspaper, or by the said posting as above provided, shall contain a notification that on that day of election therein stated, the said law, ordinance or resolution will be submitted to the referendum, and if a portion of said law, ordinance or resolution only is covered by said petition then a notification as to what particular portion of the said law, ordinance or resolution will be submitted to the said referendum.

2133j. Form of ballot. [Ch. 94, '99.] § 6. It shall be the duty of said auditor or clerk to have the ballots printed for the vote upon said law, ordinance or resolution, and cause same to be distributed in the proper proportion in each voting precinct, in his city or town in the manner now provided for the distribution of ballots in sections 17 and 18, chapter 60 of the session laws of 1897. Any or all questions shall be submitted on a separate ballot from those containing the names of the candidates for office, and shall be submitted to the people in such form as will enable the electors to vote understandingly upon each question presented, and shall conform as near as may be to the manner employed to vote upon constitutional amendments. Provided: That all questions to be voted upon at the same election may be submitted upon the same ballot.

2133k. Petition preserved. [Ch. 94, '99.] § 7. The auditor or clerk of the said city or town shall preserve the original of all petitions filed in his office in voting the referendum for a period of at least two years from the date following said petition, during which time said petition shall be open to public inspection upon reasonable request made.

2133l. Result of election. [Ch. 94, '99.] § 8. Such law, ordinance or resolution, shall not go into effect unless approved by a majority of the votes cast for and against the same, and shall go into effect immediately after the canvassing and determination of the election returns, if approved by the electors.

2133m. Election — conduct of. [Ch. 94, '99.] § 9. The appointment of judges and clerks, holding of election, and time of election, the canvassing, counting, returning and announcing of a referendary vote on any law, ordinance or resolution, and payment of election expenses shall be done in the manner already prescribed by law in the case of the election of the officers of the municipal corporation to be affected by the law, ordinance or resolution in question.

2133n. Right to propose — in whom vested. [Ch. 94, '99.] § 10. That the right to propose laws, ordinances or resolutions having the effect of law, for the government of any city or town shall rest with any five per centum of the electors of the political subdivision affected, the percentage in each instance, to be based upon the number of votes

cast at the last general election for the highest executive officer of such political subdivision held previously to the proposal of the law in question.

2133o. Made by petition. [Ch. 94, '99.] § 11. A proposal for such law, ordinance, or resolution shall be made by petition to the auditor or clerk of the municipal corporation. The petition shall be signed by five per centum of the legal voters of any political subdivision affected by such law, ordinance or resolution, each elector stating his occupation, residence and post office address and shall be filed with the auditor of said municipal corporation after the manner prescribed by the provisions of this act for the petition of the referendum, and said petition shall contain in proper form the proposed law, ordinance or resolution.

2133p. Duty of auditor. [Ch. 94, '99.] § 12. That when such petition is filed with the auditor or clerk of such municipal corporation, he shall at the first ensuing session or special session, called, submit said proposal to the legislative body thereof; and if the proposal is not adopted, or cannot be adopted by reason of want of authority by such legislative body, it shall be referred to a vote of the electors of such municipal corporation within the time and manner prescribed in this act providing for the referendum.

2133q. In effect when. [Ch. 94, '99.] § 13. That such law, ordinance or resolution shall go into effect if approved by a majority of the votes cast for and against the same.

2133r. Votes challenged. [Ch. 94, '99.] § 14. The right of any person to vote at any election on any proposition submitted to the referendum or initiative, may be challenged in the same manner and for the same cause as by law provided in the case of challenging electors.

2133s. Penalty. [Ch. 94, '99.] § 15. Any person, or persons, violating any of the provisions of this act or willfully failing to execute any of the provisions of this act shall be guilty of a misdemeanor, and on conviction, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment not less than thirty days nor more than six months, in the county jail, or by both such fine and imprisonment, in the discretion of the court.

CHAPTER 15. ASSESSMENT AND TAXATION.

ARTICLE 1. GENERAL CLASSES OF TAXABLE PROPERTY.

2134. Classes of taxable property. All property, whether real or personal, all moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise, of persons residing in this state, the property of corporations now existing or hereafter created, and the property of all banks or banking companies now existing or hereafter created, and of all bankers, except such property as is hereinafter expressly exempted, shall be subject to taxation; and such property, moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise, or the value thereof, shall be entered on the list of taxable property for that purpose in the manner prescribed by this chapter. [C. L. 1541.]

ARTICLE 2. EXEMPTIONS.

[See sec. 6, Art. II, p. 30, constitution, also 2140.]

ARTICLE 3. TAXABLE PROPERTY.

2135. What property taxable. All other property, real and personal, shall be subject to taxation in the manner provided in this chapter:

1. Lands and lots in towns and villages and cities, including lands bought from or donated by the United States and from the state, and whether bought on credit or otherwise.
2. Ferry franchises and toll bridges, which for the purposes of this act are to be considered as real property.
3. Lands which are pledged as security for debt by mortgage or otherwise, at their actual cash value without any regard whatever to the amount of any such mortgage or incumbrance.
4. Horses and neat cattle, mules and asses, sheep and swine.
5. Money, whether in possession or on deposit, and including bank bills.
6. All credits, whether money, property or labor due from solvent debtors on contract or in judgment, and whether within this state or not. In making the amount of credits which any person is required to list for himself or for any other person, company or corporation, he shall be entitled to deduct from the gross amount of credits the amount of all bona fide debts owing by such persons, company or corporation to any other person, company or corporation; provided, that nothing in this section shall be so construed as to apply to any bank, company or corporation exercising banking powers or privileges, or to authorize

any deduction allowed by this section from the value of any other item of taxation than credits.

7. Mortgages and all other securities, promissory notes and accounts, whether bearing interest or not.

8. Stocks or shares in any bank or company incorporated by this state, or any other state or territory, and situated in or transacting business in this state.

9. All public stocks and loans.

10. All household furniture not exempted by the preceding section, and including gold and silver plate, musical instruments, watches and jewelry.

11. All private libraries, for their value over one hundred dollars.

12. All pleasure carriages, stage hacks, omnibuses, and other vehicles for transporting passengers.

13. All wagons, carts, drays, sleighs and every other description of vehicles or carriages, and all plows, harrows, reaping and mowing machines, harvesters, steam engines, horse powers, grain threshers and separators, and all other implements and machinery appurtenant to agricultural labor.

14. Boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of this state solely or not, if owned wholly or in part by persons who are inhabitants of this state, for the whole or part so owned by the inhabitant of this state.

15. Annuities, but not including pensions from the United States or any other state of the union.

16. All money or capital invested or employed in manufactories, including buildings, machinery and materials.

17. All money or capital employed in merchandising.

18. All property, real and personal, within this state, in possession of or under the control of or held for sale by any warehouseman, agent, factor or representative in any capacity of any manufacturer, dealer or other agent of any such manufacturer or dealer in agricultural implements or machinery or other goods, wares or merchandise.

19. Personal property of every description belonging to persons or companies doing freighting or transportation business and belonging wholly or in part to persons within this state, for such part as is so owned by said persons.

20. All other property, real and personal, of any kind, including all improvements upon government lands except the breaking or plowing upon said land, not specially exempted by the provisions of section fifteen hundred and forty-two. [C. L. 1543.]

Land and improvements in excess of \$1,000 in value, are subject to taxation under subdivision 14, section 1542, C. L. Grigsby v. Minnehaha County, 6 S. D. 492; 62 N. W. Rep. 105.

2136. Definition of terms used in this act. [Ch. 28, '97.] § 1. The word "money" or "moneys" wherever used in this act shall be held to mean gold and silver coin, treasury notes, bank notes, and every deposit which any person owning the same or holding in trust and residing in this state is entitled to withdraw on money or demand; the term "credits" wherever used in this act, shall be held to mean and include every claim and demand for money or other valuable things, and every annuity or sum of money receivable at stated periods, due, or to become due, and all claims and demands secured by deeds or mortgage due or to become due. The terms "tract" or "lot" and "piece" or "parcel" of real property, and "piece or parcel of land," wherever used in this act shall each be held to mean any contiguous quantity of land in the possession of, owned by, or recorded as the property of the same claimant, person or company; every word importing the singular number only may be extended to and embrace the plural number; and every word importing the plural may be applied and limited to the singular number; and every word importing the masculine gender only may be extended and applied to females as well as males; wherever the word "oath" is used in this act it may be held to mean affirmation; and the word "swear" in this act may be held to mean affirm; the words "town" or "district" wherever used in this act shall be construed to mean townships, villages, city or ward, as the case may be. The term "true and full value" wherever used in this act, shall be construed to mean the usual cash selling price at the place where the property to which the term is applied shall be at the time of the assessment. The term "person" wherever used in this act, shall be construed to include firm, company or corporation.

2137. Property subject to taxation. [Ch. 28, '97.] § 2. All real and personal property in this state, and all personal property of persons residing therein, and the property of corporations, now existing or hereafter created, and the property of all banks or banking companies now existing or hereafter created except such as is hereinafter expressly excepted is subject to taxation; and such property or the value thereof, shall be entered in the list of taxable property for that purpose, in the manner prescribed in this act.

2138. Real property defined. [Ch. 28, '97.] § 3. Real property, for the purpose of taxation, shall be construed to include the land itself, whether laid out in town lots or otherwise, and all buildings, structures and improvements, trees or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in any wise appertaining, and all mines, minerals, quarries in and under the same;

providing, that trees planted under the timber culture act of congress shall not be considered as improvement on land for the purpose of taxation. The lands upon which any artesian wells shall be constructed by the owner thereof or upon which the same have been constructed by the owner thereof, shall not be assessed at any greater value by reason of said improvements, but the said lands shall be assessed the same as other lands in the locality of the same general character not irrigated or watered by artesian wells.

2139. Personal property defined. [Ch. 28, '97.] § 4. Personal property shall, for the purpose of taxation, be construed to include all goods, chattels, moneys, credits and effects, wheresoever they may be; all ships, boats and vessels belonging to the inhabitants of this state, whether at home or abroad, and all capital invested therein; all moneys at interest, whether within or without this state, due the person to be taxed and all other debts due such person; all public stocks and securities; the capital stock of all insurance companies organized under the laws of this state; all stock in turnpikes, railroads, canals and other corporations, except national banks out of the state, owned by the inhabitants of the state; all personal estate of moneyed corporations, whether the owners thereof reside in or out of the state, and the income of any annuity, unless the capital of such annuity be taxed within the state; all shares of stock in any bank organized, or that may be organized, under any law of the United States or of this state, and all improvements made by persons upon lands held by them under the laws of the United States, and all such improvements upon lands the title of which is still vested in any railroad company, or any other corporation whose property is not subject to the same mode and rule of taxation as other property.

2140. Property exempt from taxation. [Ch. 28, '97.] § 5. All property described in this section to the extent herein limited shall be exempt from taxation, that is to say:

First. The grounds, buildings and all property belonging to or used exclusively by agricultural and horticultural societies.

Second. All property, both real and personal, belonging to any educational institution in this state, and all property used exclusively by and for the support of such school and scientific institution.

Third. All property belonging to any charitable, benevolent or religious society, or used exclusively for charitable, benevolent or religious purposes.

Fourth. One lot in a cemetery for family use.

Fifth. The personal property of each individual liable to assessment and taxation under the provisions of this act, of which such individual

is the actual and bona fide owner, to the amount of not exceeding twenty-five dollars in value, in household furniture and provisions; provided, that each person shall list all of his personal property for taxation, and the county auditor shall deduct, after county equalization, the amount of the exemption authorized by this section, from the total amount of his assessment and levy taxes upon the remainder.

The following classes of property shall be exempt from taxation, and may be omitted from the list herein required to be given:

1. The property of the United States and of this territory, including school lands.

2. The property of a county, incorporated city or village, or school district, when devoted to public use and not held or used for pecuniary profit.

3. Public grounds, by whomsoever devoted to the public use, and including all places set apart for the burial of the dead.

4. The engine and implements used for the extinguishment of fires, with the grounds used exclusively for their buildings and for the meetings of fire companies.

5. The grounds and buildings of library, scientific, educational, benevolent and religious institutions, colleges or societies, devoted solely to the appropriate objects of these institutions, not exceeding ten acres in extent and not leased or otherwise used with a view to pecuniary profit.

6. 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 purpose of their education.

7. Moneys and credits belonging exclusively to such institutions and devoted solely to sustaining them, but not to exceed in amount of total valuation, aside from the property of students as above mentioned, the sum prescribed in their charter or act of incorporation.

8. All animals not specified in the next section.

9. Private libraries not exceeding one hundred dollars in value.

10. Family pictures.

11. The household furniture of each family, together with the beds and bedding thereof, and all wearing apparel of every person and family actually used for wearing, not to exceed in valuation two hundred dollars.

12. All food and fuel provided in kind, not to exceed provision for one year's time; provided, that no person for whom a compensation for board or lodging is received or expected shall be considered a member of a family within the intent and meaning of this chapter.

13. The polls or estates of 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.

14. Any one-fourth part of any quarter-section of prairie land, the same being a legal subdivision, on which five acres of timber shall be planted either by sowing seed or by setting trees or cuttings, and the same to be kept in growing order by cultivation and not to be more than twelve feet apart each way, together with all improvements thereon, not to exceed in value one thousand dollars, and for a period of ten years from and after the planting of said timber, and any change of ownership of such kind shall in no way affect the exemption from taxation as herein provided; provided, however, that no person shall derive any of the benefits as set forth in this subdivision until such person shall file an affidavit with the assessor that he has in every way complied with the requirements of the law made and provided in such cases, whereupon the assessor shall make a note of the words, to wit: "Exempt from taxation by virtue of tree culture," and shall describe the particular tract or tracts of land so exempt.

[For exemption of land broken for fire-guards, see section 2401.]

15. All improvements made on real property by setting out either forest or fruit trees, shrubbery or vineyards, which shall not be considered as increasing the value of the land for purpose of taxation.

16. All pensions from the United States or from any of the states of the union.

17. The polls of all active members in good standing of any regular organized fire company, not exceeding thirty in number in cities or towns of more than five hundred inhabitants, and not exceeding fifteen in number in towns or cities of less than five hundred inhabitants: provided, that such fire company actually and in good faith possess apparatus for the extinguishment of fires, exceeding two hundred and fifty dollars in value, to be determined by the assessor of the proper county. [C. L. 1542.]

See § 6, Art. II, constitution, p. 80.

Legislature of the territory of Minnesota had power to exempt railroad lands from taxation until sold by the company; such provision in the charter was a contract which could not be affected by subsequent legislation. *Winona & St. P. R. R. Co. v. The County of Deuel*, 3 S. D. 1; 12 N. W. Rep. 561.

Division of territory does not affect that part made territory of Dakota. *Id.*

2140a. County commissioners to provide forms for listing property. On or before the twentieth day of January of each year, the board of county commissioners of each county shall provide for the use of the assessor suitable notices and blank forms for the listing and assessment of all property, and such instructions as shall be needful to secure full and uniform assessment and returns; and all the entered lands in his county or district, subject to taxation. The list of taxable property assessed to each person shall contain:

1. His lands by township, range and section, and any division or part of a section or numbered fractional lot of any 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.

2. His 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.

3. His right and title in any ferry franchise, toll bridge or part thereof, by the total and actual cash value of the same.

4. Amount of capital employed in merchandising or manufacturing including all buildings, machinery and appurtenances thereto.

5. Number of horses.

6. Number of mules and asses.

7. Number of neat cattle over one year of age.

8. Number of sheep over three months old.

9. Number of swine over three months old.

10. Number of carriages and vehicles of every description.

11. Amount of moneys and credits, including actual and total cash value of all such credits, notes and accounts due.

12. Amount of taxable household furniture.

13. Amount of stocks or shares in any incorporated company or company not incorporated.

14. Amount of all property, machinery or merchandise held and controlled as agent of any manufacturing company or agent thereof.

15. All real property sold by any party or corporation under any form of grant or conveyance or contract therefor of which the vendor had or has an inchoate contingent or equitable title, right or claim, and which is in the name, possession or use of any vendee who has voluntarily taken such grant or contracts for such title, right or claim; provided that nothing herein shall be construed so as to affect or impair any right of a person holding or claiming lands from the United States under the homestead or pre-emption laws.

16. All other property not specially enumerated in this section by its actual cash value, except such as is specially exempted by section 1542. (Comp. Laws.) [C. L. 1544.]

2141. Listing of real and personal property. [Ch. 28, '97.] § 6. All real and personal property in this state subject to taxation shall be listed and assessed every year with reference to its value on the first day of May preceding the assessment.

2142. Manner of listing property. [Ch. 28, '97.] § 7. Personal property shall be listed in the manner following:

First. Every person of full age and sound mind, being a resident of this state, shall list his moneys, credits, bonds or stock shares, or stock of joint or other companies (when the property of such company is not assessed in this state), moneys loaned or invested, annuities, franchises, royalties and other personal property.

Second. He shall also list separately and in the name of his principal all moneys and other personal property invested, loaned or otherwise controlled by him as the agent or attorney or on account of any other person or persons, company or corporation whatsoever; and all moneys deposited subject to his order, draft or check, and credits due from or owing to any person or persons, body corporate or politic.

Third. The property of a minor child shall be listed by his guardian or by the person having such property in charge.

Fourth. The property of an idiot or lunatic by the person having charge of such property.

Fifth. The property of a person for whose benefit it is held in trust by the trustee of the estate of a deceased person, by the executor or administrator.

Sixth. The property of corporations whose assets are in the hands of receivers, by such receivers.

Seventh. The property of a body politic or corporate, by the president or proper agent or officer thereof.

Eighth. The property of a firm or company, by a partner or agent thereof.

Ninth. The property of manufacturers and others in the care of an agent in the name of his principal, as merchandise.

2142a. To secure assessment of all taxable property. [Ch. 40, '99.]

§ 1. The county auditor shall annually provide the necessary assessment books and blanks at the expense of the county, for and to correspond with each assessment district or township. The assessment books and blanks shall be in readiness for delivery to the assessors on the last Saturday in April in each year; and the assessors shall meet on that day, at the office of the county auditor, for the purpose of receiving such books and blanks, and for conference with the auditor and county commissioners in reference to the performance of their duties, and the commissioners shall meet on that day for that purpose. At such time and meeting the assessors shall take the oath of office to be administered by the county auditor.

2142b. Oath of office. [Ch. 40, '99.] § 2. The oath of office to be taken by any assessor and endorsed upon his bond shall be in the words following:

STATE OF SOUTH DAKOTA, }
County of..... } ss.:

I, do solemnly swear that I will support the constitution of the United States and the constitution of the state of South Dakota, that I will faithfully and impartially and honestly discharge the duties of my office as assessor, particularly that I will assess all property assessed by me at its true cash value according to my best knowledge and judgment so help me God.

Subscribed and sworn to before me this day of..... 189....

2142c. Additional oath — deputy. [Ch. 40, '99.] § 3. Each assessor or deputy assessor shall take and subscribe an oath, which shall be certified by the county auditor, or other officer administering the

same, and attach to the return which he is required to make to the county auditor, in the following form:

I, assessor for the of in county, in the state of South Dakota, do solemnly swear or affirm, that the return to which this is attached contains a correct description of each parcel of real property within said township or assessment district, as far as I have been able to ascertain the same; that the value attached to each parcel in said return is, as I verily believe, the full and true cash value thereof; that in no case have I knowingly omitted to demand a statement of the description and value of all the real estate which I am required by law to list, or in any way connived at any violation or evasion of any of the requirements of the law in relation to the listing and valuing of real estate, subject to all the penalties by law.

Which return shall be kept at the office of the county auditor for the inspection of any owner of property contained in such return.

2142d. Returns. [Ch. 40, '99.] § 4. Each assessor shall, on or before the first Monday of July annually, make out and deliver to the auditor of his county, in tabular form and alphabetical order, a list or lists of the names of the several persons, companies or corporations in whose names any personal property, moneys, credits or other taxables shall have been listed, on which list or lists he shall enter separately, in appropriate columns opposite each name, the aggregate value of the several species of personal property and taxables required to be listed as attested by the person required to list the same, or as determined by the assessor making separate lists of persons residing out of any incorporated city or town, and of any persons who are residents of an incorporated city or town.

2142e. Verification. [Ch. 40, '99.] § 5. The columns shall be accurately added up. To such return shall be attached the following oath or affirmation, to be made by himself or his deputy, and certified by the county auditor or other officer administering the same:

I, , assessor for county, in the state of South Dakota, do solemnly swear (or affirm) that the value of all personal property, moneys, credits and other assessables of which a statement has been made and attested by oath or affirmation of the person required by law to list the same, is truly returned as set forth in such statement; that in every case where by law I have been required to ascertain the amount and value of personal property and assessables of any person, company or corporation, I have diligently, and by the best means in my power endeavored to ascertain the true amount and value of such personal property and assessables, and that as I verily believe, the full value thereof so ascertained by me and estimated by the rule prescribed by law, is set forth in the annexed return; that in no case have I knowingly omitted to demand a statement of the description and value of personal property or of the amount of moneys and credits or of the amount and value of other stocks or bonds or other assessables which any person is required by law to list, nor have I in any way connived at any violation or evasion of any of the requirements of law in relation to listing or valuing the personal property, moneys, credits, stocks or other assessables for taxation.

2142f. Personal inspection. [Ch. 40, '99.] § 6. For the purpose of properly listing and assessing property for taxation and equalizing and collecting taxes, the city or township or county, assessor or his deputy, shall personally inspect and examine all property listed and assessed, and each shall have the right to inspect and examine the

records of all public offices and the books and papers of all corporations, banks and taxpayers in this state, without charges, and they shall also have power to administer oaths or affirmation to any and all persons in the discharge of their duties.

2142g. List of personal property to be made under oath. [Ch. 40, '99.]

§ 7. Every person required by this act to list property, shall make out and deliver to the assessor, when required, a statement verified by oath of all the personal property in his possession or under his control and which by the provisions of this act, he is required to list for taxation, either as owner or holder thereof, or as a guardian, parent, trustee, administrator, executor, receiver, accounting officer, partner, agent or factor, but no person shall be required to include in his statement any share or portion of the capital stock or property of any company or corporation, which such company is required to list and return as its capital and property for taxation in this state. It shall be the duty of the assessors in every town to require all persons giving in tax lists to sign, date and deliver to them a sworn statement upon said list, and the person called upon, or required by the assessor to list his property shall answer in writing over his signature the following interrogatories under oath.

Interrogatory 1. Are you, or were you, on the first day of May of the present year, the executor of the last will, or the administrator of the estate of any deceased person, or the guardian of the estate of any infant or person of unsound mind, or trustee of the property of any person, or the receiver of the property of any corporation, association or firm, or the agent or attorney or banker investing, loaning or otherwise controlling the money or property of any other person residing in this state, or the president or accounting officer of any corporation, or a partner, consignee, or pawnbroker? If you were, designate for whom you were or now are acting in such representative of fiduciary capacity and if you were or now are acting under the authority of any particular court, name the court, and also to what court you report.

Interrogatory 2. Have you, before the first day of May of the present year, either personally or through the agency of others, caused all or any part of your taxable money or other property to be temporarily converted, either by sale, borrowing, exchanges, or in any other manner, into bonds or other securities of the United States not taxable, or any other property not taxable, with the intention to pay back, return or exchange, or sell back such property after you have made out your tax statement, for the purpose of evading the payment of taxes on such property; or did you on or after the first day of May of the present year, and before you saw this interrogatory, pay back, return or exchange or sell back such property for the purpose aforesaid?

Interrogatory 3. If you have converted any of your money or property, or money or property of any other person, as inquired of you, then state when the same was so converted, or invested, and the kind

and amount and value thereof. And the person, so answering and assessed, shall date and deliver a sworn statement upon said list of the following form:

STATE OF SOUTH DAKOTA, }
County of..... } ss.

I....., duly sworn say, to the best of my knowledge, information and belief, the foregoing statement contains a true, full and complete list of all the property held or belonging to me, and dogs owned or kept or harbored by me on the first day of April, including all personal property appertaining to merchandising, whether held in actual possession, or only having been purchased with a view to possession or profit, and all personal property appertaining to manufacturing, and all manufactured articles whether on hand, or owned by me. In all cases where I have been unable to exhibit certain classes of property to the assessor, such property has been fully and fairly described and its true condition and value represented. That I have in no case sought to mislead the assessor as to either quantity, quality or value of property, and that the deductions claimed from credits, are bona fide debts, for a consideration received, and do not consist in any parts in bonds, notes or obligations of any kind given to any insurance company on account of premium or policies, nor on account of any unpaid subscriptions to any literary, scientific, or charitable institution or society, nor on account of any subscription to or indebtedness payable on capital stock of any company, whether incorporated or unincorporated; and I further swear that since the first day of May of last year, I have not directly or indirectly converted any of my property temporarily for the purpose of evading the assessment thereof for taxes, into non-taxable property or securities of any kind. I further swear that I have to the best of my knowledge and judgment, valued said property at its true cash value, by which I mean the usual selling price, being the price which could be obtained at private sale and not at forced or auction sale.

Subscribed and sworn to before me this.....day
of.....

..... Assessor.

By.....deputy.

Any person signing and delivering to the assessor a false statement of the foregoing form shall be guilty of the crime of perjury, and subject to the punishment by law provided for this crime.

2142h. Penalty for evasion. [Ch. 40, '99.] § 8. If any person or corporation shall give a false or fraudulent list, schedule or statement required by this act, or shall willfully fail or refuse to deliver to the assessor, when called on for that purpose, a list of the taxable property which he is required to list under this act or shall temporarily convert any part of his property into property not taxable for the fraudulent purpose of preventing such property from being listed, and of evading the payment of taxes thereon, he or it shall be liable to a penalty of not less than fifty dollars nor more than five thousand dollars, to be recovered in any proper form of action in the name of the state of South Dakota, on the relation of the state's attorney. The assessor shall forthwith notify the state's attorney of such delinquency

or offense, and he shall prosecute such offender to final judgment and execution, and such fine when collected shall be paid into the county treasury for the use of the county, and the state's attorney shall receive ten per centum commission of all moneys so collected and paid in, and a docket fee of ten dollars, to be taxed and collected with costs in such actions.

2142i. Penalty for refusal. [Ch. 40, '99.] § 9. In every case where any person shall refuse to make out and deliver to the proper assessor the statement required under — this act,— or shall refuse to take and subscribe to any of the oaths or affirmations required by this act, the assessor shall proceed to ascertain the number of each description of the several enumerated articles of property and the value thereof and for this purpose he may examine on oath any person or persons whom he may suppose to have knowledge thereof, and such assessor shall make a note of such refusal in a column opposite the person's name, and the county auditor shall add to such valuation when returned by the assessor fifty per centum on the value so returned.

2142j. Refusal to make oath. [Ch. 40, '99.] § 10. If any person required by the assessor to give evidence, as provided in the preceding section, or in any case when interrogated by the assessor as to any property real or personal, of himself or others, shall refuse to be sworn or affirm, or if having been sworn or affirmed, he shall refuse to answer the interrogatories hereinbefore set out, or any other questions touching the subject of inquiry such person upon conviction thereof shall be fined in any sum not more than five hundred dollars, nor less than ten dollars, to which may be added imprisonment in the county jail not exceeding six months.

2142k. Failure of assessor. [Ch. 40, '99.] § 11. If any assessor or deputy assessor shall fail or neglect to administer to any person by him assessed any oath required by this act to be administered, he shall forfeit and pay to the state of South Dakota, for the use of the school fund, the sum of twenty dollars for each case of such omission and neglect, which may be recovered by an action in the name of the state of South Dakota on the relation of the state's attorney before any justice of the peace of the county, together with the costs of such action.

2142l. Oaths to be verbal. [Ch. 40, '99.] § 12. All oaths administered to any person or persons under any of the provisions of this act shall be verbal and the person or persons making such oath shall then be required to sign same.

2142m. Penalties. [Ch. 40, '99.] § 13. Any person, firm or corporation who shall evade, deceive or by any manner of means not list all the property real or personal of any and all descriptions in addition to any and all other penalties be subject to a penalty of having added to his assessment as previously listed the amount not listed and an additional amount as a penalty of fifty per cent.

2142n. Fraud — detection — reward. [Ch. 40, '99.] § 14. Any assessor or deputy, county auditor, board of review or state board of equalization, who shall upon investigation ascertain by means of investigation that any party has not so listed all or any part of his property, real or personal, shall cause the same to be so listed as required in the preceding section, number 12, and the assessor or deputy or other authorized officer causing such omission and penalty to be so listed shall receive for compensation fifty per cent of the additional penalty to be paid at such times as such tax is collected on such assessment.

2143. Place of listing personal property. [Ch. 28, '97.] § 8. Personal property, except such as is required in this act to be listed and assessed otherwise shall be listed and assessed in the county, town or district where the owner or agent resides; the capital stock and franchises of corporations and persons, except as may be otherwise provided, shall be listed in the county, town or district where the principal office or place of business of such corporation or person is located in this state; if there be no principal office or place of business in this state where any such corporation or persons transact business, then personal property pertaining to the business of a merchant or manufacturer shall be listed in the town or district where his business is carried on.

Situs of money sent into this state to an agent who controls it, deemed to be at residence of such agent for purpose of taxation. Bellinghurst v. Spink County, 5 S. D. 84; 58 N. W. Rep. 272.

County wherein herd of cattle are situated, largely question of fact, and finding of court will not be disturbed. Holcomb et al. v. Kelliher, County Treasurer, 5 S. D. 438; 59 N. W. Rep. 237.

Home ranch where herders start to make "round up" where are situated corrals. Herders' headquarters is home or situs of such cattle. Id.

Section 1156, Comp. Laws, providing for listing of personal property, where situated on 1st day of April, must be followed, and tangible property must be assessed accordingly. *Holcomb v. Kelliher*, 5 S. D. 438; 59 N. W. Rep. 227.

Party assessed in more than one county for personalty tax, after having paid the tax in the county wherein he resides, may, by action, restrain collection of taxes in the other county. *Knapp v. Charles Mix County*, 7 S. D. 399; 64 N. W. Rep. 187.

Personal property situated in the unorganized county of Pyatt in 1893 subject to taxation for state purposes in Stanley county, that being the nearest organized county. *Dupree v. Stanley County et al.*, 8 S. D. 30; 65 N. W. Rep. 426.

Property must be listed in county where agent resides and controls it for non-resident owner. *Knapp v. Charles Mix County*, 7 S. D. 399; 64 N. W. Rep. 187.

2144. Property of transportation companies, etc., where to be listed. [Ch. 28, '97.] § 9. The personal property of stage companies shall be listed and assessed in the county, town or district where the same is usually kept, except as herein otherwise provided. All persons, companies and corporations in this state owning steamboats, sailing vessels, wharf boats, barges and other water crafts shall be required to list the same for assessment and taxation in the county, town or district in which the same may belong, or be enrolled, registered or licensed, or kept not enrolled, registered or licensed.

2145. Of gas and water companies, where listed. [Ch. 28, '97.] § 10. The personal property of gas and water companies shall be listed in the city or town where such personal property is located. Gas and water mains and pipes laid in roads, streets or alleys shall be held to be personal property.

2146. Of street railway companies, where listed, etc. [Ch. 28, '97.] § 11. The personal property of street, railroad, plank road, gravel road, turnpike or bridge companies shall be listed and assessed in the county, town or district where the principal place of business is located, and the track, road or bridge shall be held to be personal property.

2147. Non-resident's farm property, where listed. [Ch. 28, '97.] § 12. Where the owner of live stock or other personal property connected with a farm does not reside thereon, the same shall be listed and assessed in the town or district where the farm is situated.

2148. Personal property moved between May first and June first. [Ch. 28, '97.] § 13. The owner of personal property moving from one county, town or district to another between the first day of May and the first day of June, shall be assessed in either in which he is first called upon by the assessor. The owner of personal property moving into this state from another state or territory between the first day of May and the first day of June, shall list the property owned by him on the first day of May of such year in the county, town or district in which

he resides; provided, if such person has been assessed and can make it appear to the assessor that he is held for tax of the current year on the property in another territory or state, county, town or district, he shall not again be assessed for such year.

2149. Place of listing, how decided and in case of doubt. [Ch. 28, '97.] § 14. In all questions that may arise under this act as to the proper place to list personal property, or where the same cannot be listed as stated in this act, if between several places in the same county, the place for listing and assessing shall be determined and fixed by the county board, and when between different counties or places in different counties, by the auditor of the state, and when fixed in either case shall be as binding as if fixed by this act.

2150. List of personal property to be made under oath. [Ch. 28, '97.] § 15. Every person required by this act to list property shall make out and deliver to the assessor, when required, a statement verified by oath of all the personal property in his possession or under his control, and which, by the provisions of this act, he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor, but no person shall be required to include in his statement any share or portion of the capital stock or property of any company or corporation, which such company is required to list or return as its capital and property for taxation in this state. It shall be the duty of the assessors in every town to require all persons giving in tax lists to sign, date and deliver to them a sworn statement upon said list, of the following form:

" I do hereby declare under oath that the foregoing list, according to the best of my knowledge and belief, is a true statement of all my property liable to taxation, and that I have included in said tax list all bonds, notes and other evidence of indebtedness, except such as are by statute exempt from taxation. I also declare under oath that I have not conveyed or temporarily disposed of any property for the purpose of evading assessment and taxation.

Dated this day of, 18....

..... sig."

Any person signing and delivering to the assessor a false statement of the foregoing form shall be guilty of the crime of perjury, and subject to punishment by law provided for this crime.

2151. Duty of assessor — statement. [Ch. 28, '97.] § 16. It shall be the duty of the assessor to determine and fix the true and full value of all items of personal property included in such statement and enter the same opposite such items respectively, so that when completed such statement shall truly and distinctly set forth:

First. The number of horses under three years old, and over six months old, and three years old and over, and the value thereof.

Second. The number of cattle under two years old and over six months old, the number of cows two years old and over, the number of all other cattle two years old and over, and the value thereof.

Third. The number of mules and asses of all ages over six months old, and the value thereof.

Fourth. The number of sheep of all ages over three months old, and the value thereof.

Fifth. The number of hogs of all ages over three months old, and the value thereof.

Sixth. The number of wagons and carriages of whatsoever kind, and the value thereof.

Seventh. The number of melodeons and organs, and the value thereof.

Eighth. The number of piano fortes, and the value thereof.

Ninth. The value of household furniture.

Tenth. The value of agricultural tools, implements and machinery.

Eleventh. The value of gold and silver plate and plated ware.

Twelfth. The value of diamonds and jewelry.

Thirteenth. The value and description of every franchise, annuity, royalty and patent right.

Fourteenth. The value of every steamboat, sailing vessel, wharf boat, barge or other water craft.

Fifteenth. The value of goods and merchandise which such person is required to list as a merchant.

Sixteenth. The value of materials and manufactured articles which such person is required to list as a manufacturer.

Seventeenth. The value of manufacturers' tools and implements and machinery, including engines and boilers.

Eighteenth. The amount of moneys of banks (other than those whose capital is represented by shares of stock), bankers, brokers or stock jobbers.

Nineteenth. The amount of credits of banks (other than those whose capital is represented by shares of stock), bankers, brokers or stock jobbers.

Twentieth. The amount of money other than of banks, bankers, brokers or stock jobbers.

Twenty-first. The amount of credits, other than of banks, bankers, brokers or stock jobbers.

Twenty-second. The amount and value of bonds and stock, other than bank stock.

Twenty-third. The amount and value of shares of bank stock.

Twenty-fourth. The amount and value of shares of capital stock of companies and associations not incorporated by the laws of the state.

Twenty-fifth. The value of stock and furniture of sample rooms and eating houses, including billiard tables and other similar tables.

Twenty-sixth. The value of all other articles of personal property, not including the preceding twenty-five items.

Twenty-seventh. The value of all elevators, warehouses and grain therein, and improvements on lands, the title of which is vested in any railroad company.

Twenty-eighth. The value of all improvements except plowing, on lands held under the laws of the United States and upon which final proof has not been made and accepted. The capital stock of insurance companies organized under the laws of this state shall be assessed against such companies at the place where their principal office is located in this state.

2152. Examination under oath by assessor — refusal to answer. [Ch. 28, '97.] § 17. Whenever the assessor shall be of [the] opinion that the person listing property for himself or for another person, company or corporation has not made a full, fair and complete list of such property, he may examine such person under oath in regard to the amount of property he is required to list, and if such person shall refuse to answer under oath and a full discovery make, the assessor may list the property of such person or his principal, according to his best judgment and information.

2153. Who are deemed to be manufacturers — what to be listed. [Ch. 28, '97.] § 18. Every person who purchases, receives or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying, or by the combination of different materials, with a view to making gain or profit by so doing, shall be held to be a manufacturer; and he shall, when required to make and deliver to the assessor a statement of the amount of his other personal property subject to taxation, also include in his statement the value of all articles purchased, received or otherwise held for the purpose of being used in whole or in part, in any process or operation of manufacturing, combining, rectifying or refining. Every person owning a manufacturing establishment of any kind, and every manufacturer shall list, as part of his manufacturer's stock, the value of all his engines and machinery of every description, used or designed to be used in any process of refining or manufacturing, including all tools and implements of every kind used or designed to be used for the aforesaid purpose, except such fixtures as have been considered as part or any parcel of real property.

2154. Property of companies or associations, how and by whom listed. [Ch. 28, '97.] § 19. The president, secretary or principal account-

ing officer of any company or association, whether incorporated or unincorporated, except such corporations as are otherwise specifically provided for in this act, shall make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

First. The name and location of the company or association.

Second. The amount of capital stock authorized and the number of shares into which said capital stock is divided.

Third. The amount of capital stock paid up.

Fourth. The market value, or if they have no market value, then the actual value of the shares of the stock.

Fifth. The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth. The value of all real property, if any.

Seventh. The value of its personal property. The aggregate amount of the fifth, sixth and seventh items shall be deducted from the total amount of the fourth, and the remainder, if any, shall be listed as bonds or stocks under subdivision twenty-four of section sixteen of this act. The real and personal property of each company or association shall be listed and assessed the same as other personal property. In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information he can obtain.

2155. Bankers, brokers and stock jobbers, how and what they shall list. [Ch. 28, '97.] § 20. The accounting officer of every bank whose capital is not represented by shares of stock, and every private banker, broker or stock jobber, shall make out and deliver to the assessor, when required to list personal property, a statement which he shall verify by oath showing:

First. The amount of money on hand or in transit.

Second. The amount of funds in the hands of other banks, brokers or others subject to draft.

Third. The amount of checks or cash items, the amount thereof not being included in either of the preceding items.

Fourth. The amount of bills receivable, discounted or purchased and other credits due or to become due, including accounts receivable, interest accrued but not due and interest due and unpaid.

Fifth. The amount of bonds and stocks of every kind (except United States bonds) and shares of capital stock of joint-stock or other companies or corporations, held as an investment or in any way representing assets.

Sixth. All property pertaining to said business, other than real estate, which real estate shall be listed and assessed as other real estate is listed and assessed under this act.

Seventh. The amount of all deposits made with them by other parties.

Eighth. The amount of all accounts payable, other than current deposit accounts. The amount of the seventh and eighth items shall be deducted from the aggregate amounts of the first, third and fourth items, and the remainder, if any, shall be listed as money under subdivision eighteen of section sixteen of this act, according to the provisions of said section sixteen; the amount of the fifth item shall be listed as bonds and stock under the said section sixteen, and the said sixth item shall be listed the same as other similar personal property is listed under this act, except that in the case of savings banks organized under the laws of this state, the amount of the seventh and eighth items above enumerated shall be deducted from the aggregate amount of the first, second, third, fourth, fifth and sixth items also above enumerated, and the remainder, if any, shall be listed as credits according to the provisions of said section sixteen.

2156. Bank stock, where and at what valuation to be listed. [Ch. 28, '97.] § 21. The stockholders of every bank located in this state, whether such bank has been organized under the banking laws of this state or of the United States, shall be assessed and taxed on the value of their shares of stock therein in the county, town, district, city or village where such bank or banking association is located, and not elsewhere, whether such stockholders reside in such places or not; such shares shall be listed and assessed annually with regard to the ownership and the value thereof on the first day of May of each year. To aid the assessor in determining the value of such shares of stock, the accounting officer of every bank shall furnish a statement to the assessor, verified by oath, showing the amount and number of such shares of capital stock of such bank, the amount of its surplus or reserve fund, and the amount of its legal investments in real estate, which real estate shall be assessed and taxed as other real estate is assessed and taxed under this act. The assessor shall deduct the amount of such investments in real estate from the aggregate amount of such capital and surplus fund, and the remainder shall be taken as a basis for the valuation of such shares of stock in the hands of the stockholders, subject to the provisions of law requiring all property to be assessed at its true and full value. The shares of capital stock of national banks not located in this state, held in this state, shall not be required to be listed under this act.

Bank not being the owner cannot restrain collection of taxes against its stock, which is assessed against the holder of the stock. *N. W. Loan & Banking Co. v. Muggil, Treasurer*, 7 S. D. 527; 64 N. W. Rep. 1122; 8 S. D. 160; 65 N. W. Rep. 442.

2157. Bank to keep and furnish lists of stockholders. [Ch. 28, '97.] § 22. In every bank and banking office there shall be kept at all times a

full and correct list of the names and residences of the stockholders, owners or parties interested therein, showing the number of shares and amount held, owned or controlled by each party in interest, which statement or list shall be subject to the inspection of the officer authorized to assess property for taxation; and it shall be the duty of the accounting officer or cashier of each bank or banking institution to furnish the assessor with a duplicate copy of such statement, verified by oath, which shall be returned to the county auditor and filed in his office.

2158. Taxes on bank stock to be lien on dividends. [Ch. 28, '97.]

§ 23. To secure the payment of taxes on bank stock or banking capital, it shall be the duty of every bank, or managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholders or owners as shall be necessary to pay any taxes levied upon their shares of stock or interest, respectively, until it shall be made to appear to such bank or its officers that such taxes have been paid; and any officer, or any such bank who shall pay over or authorize the paying over of any such dividend or a portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax; and if the said tax shall not be paid, the county treasurer where said bank is located shall sell such shares or interest to pay the same, like other personal property; and in case of sale, the provisions of law in regard to the transfer of stock, when sold on execution, shall apply to such sale.

2159. Certain property held to belong to lessee or equitable owner.

[Ch. 28, '97.] § 24. Property held under a lease for a term of three or more years, or a contract for the purchase thereof, belonging to the state, or to any religious, scientific or benevolent society or institution, whether incorporated or unincorporated, or to any railroad company or corporation whose property is not taxed in the same manner as other property shall be considered for all purposes of taxation as the property of the person so holding the same.

2160. All property to be assessed at full value — value, how determined.

[Ch. 28, '97.] § 25. All property shall be assessed at its true and full value in money. In determining the true and full value of real and personal property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value, the price for which said property would sell at auction or at a forced sale, or in the aggregate with all the property in the town or district; but he shall value each article or description of property by itself and at such a sum or price as he believes the same to be fairly worth in money. In assessing any tract

or lot of real property, the value of the land, exclusive of improvements, shall be determined; also the value of all improvements and structures thereon, and the aggregate value of the property including all structures and other improvements, excluding the value of crops growing upon cultivated lands. In valuing any real property upon which there is a coal or other mine, stone or other quarry, the same shall be valued at such a price as such property, including the mine or quarry, would sell at a fair voluntary sale for cash. Money, whether in possession or on deposit, shall be entered in the statement at the full amount thereof. Every credit for a sum certain, payable either in money, property of any kind, labor or services, shall be valued at the current price of the same so payable; if for a specific article or a specific number or quantity of any article of property, or for a certain amount of labor, or for services of any kind, it shall be valued at the current price of such property, or for such labor or services at the place where payable.

2161. County auditor to furnish books, etc.—meeting of assessors. [Ch. 28, '97.] § 26. The county auditor shall annually provide the necessary assessment books and blanks at the expense of the county, for and to correspond with each assessment district or township. The assessment books and blanks shall be in readiness for delivery to the assessors on the last Saturday of April in each year; and the assessors shall meet on that day, at the office of the county auditor, for the purpose of receiving such books and blanks, and for conference with the auditor and county commissioners in reference to the performance of their duties, and the commissioners shall meet on that day for that purpose.

2162. Who are deemed to be merchants — property consigned — nursery stock. [Ch. 28, '97.] § 27. Whoever owns or has in his possession, or subject to his control, any goods, merchandise, grain or produce of any kind, or other personal property, within this state, with authority to sell the same which has been purchased either in or out of the state with a view to being sold at an advanced price or profit, or which has been consigned to him from out of this state, for the purpose of being sold at any place within this state, shall be held to be a merchant, and when he is by this act required to make out to the assessor a statement of his personal property, he shall state the value of such property pertaining to his business as a merchant.

2163. Assessor districts, boundaries of — vacancies, how filled — fees — eligibility. [Ch. 28, '97.] § 28. Each county in this state not fully organized into civil townships, shall comprise an assessor's direct, excluding organized civil townships, and the assessor thereof shall be elected at the

same time that state officers are elected; provided, that any vacancy may be filled by appointment by the county commissioners. Each organized civil township in this state shall constitute an assessor district, and the chairman of the board of supervisors for such township may be ex-officio assessor for such district; provided, any vacancy in the office of township assessor may be filled by appointment by the other two members of the board of supervisors together with a justice of the peace of said township; provided, that cities organized under the general laws of this state, shall not be included in the districts provided for in this section, but assessors of such cities shall act with the board of county assessors in any of their meetings as assessors. All assessors shall receive not to exceed three dollars per day for the time actually employed in making and completing such assessment; provided, further, that no person shall be eligible to be assessor unless he is a voter in the district or township for which he is to be assessor.

2164. Bond and oath of assessor. [Ch. 28, '97.] § 29. Every person elected or appointed to the office of assessor, and every supervisor acting as assessor, shall, at or before the time of receiving his assessment books, file with the county auditor his bond, payable to the state of South Dakota, with at least two good freeholders as sureties, to be approved in counties organized into civil townships by the other two members of the board of township supervisors and the township clerk; and in counties not so organized by the board of county commissioners, in the penal sum of five hundred dollars, conditioned that he will diligently, faithfully and impartially perform the duties enjoined on him by law; and he shall take and subscribe on said bond an oath that he will, according to the best of his judgment, skill and ability, diligently, faithfully and impartially perform all the duties enjoined on him by this act. And if any person so elected or appointed fails to give the bond, or fails to take the oath required of him within the time prescribed, such failure shall be deemed a refusal to serve.

2165. Assessments, when and how made. [Ch. 28, '97.] § 30. The assessor shall perform the duties required of him during the months of May and June of each year, except in cases otherwise provided, and in the following manner, to wit: He shall actually view when practicable, and determine the true and full value of each tract or lot of real property listed for taxation, and shall enter the value thereof in one column and the value of all improvements or structures thereon in another column, opposite each description of property, also the total value of the same, including improvements and structures. He shall make an alphabetical list of the names of all the persons in his town or district liable to assessment of personal property, and

require each person to make a correct list and statement of such property according to the prescribed form, which statement and list shall be subscribed and sworn to by the person listing the property, and the assessor shall thereupon determine the value of the property included in such statement, and enter the same in his assessment books opposite the name of the party assessed, and in making such entry in his assessment books he shall give the name and the post-office address of the party listing the property, and if the party resides in a city the assessor shall give the street and number, or other brief description of the residence or place of business; provided, that personal property shall be assessed upon view by the assessor at any time within the limits prescribed by the provisions of this act, at its then actual value regardless of any change of ownership prior to the date of such assessment, but if the owner, factor or agent can show by duly authenticated certificate that the property has been lawfully assessed in any other town, city, village or district in this state for that year, then such property shall not be assessed.

2166. Statement of personal property to be made by owners. [Ch. 28, '97.] § 31. The assessor shall call at the office, place of business, or residence of each person required by this act to list property and list his name, and shall require such person to make a correct statement of his property in accordance with the provisions of this act, and every person so required shall enter a true and correct statement of such property in the form prescribed, which statement shall be signed and verified by the oath of the person listing the property and delivered to the assessor, who shall thereupon assess the value of such property and enter the same in his books; provided, if any property is listed or assessed on or after the last day of June and before the return of the assessor's books, the same shall be as legal and binding as if listed and assessed before that time.

2167. Sickness and absence of owner — duty of assessor. [Ch. 28, '97.] § 32. If any person required by this act to list property be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office or usual place of business or residence of such person, a written or printed notice requiring such person to make out and leave the place named by such assessor, on or before some convenient day named therein, the statement or list required by this act, the date of leaving such notice, and the person required to list the property shall be noted by the assessor in his assessment book.

2168. Refusal to list or swear to statement — duty of assessor — oath. [Ch. 28, '97.] § 33. In any case where any person whose duty it is to list personal property for taxation, has refused or neglected to

list the same when called on by the assessor for that purpose, or to take and subscribe an oath in regard to the truth of his statement of personal property, or any part thereof, when required by the assessor, the assessor shall enter opposite the name of such person in an appropriate column the words "Refused to list" or "Refused to swear" as the case may be, and in every case where any person required to list property for taxation has been absent or unable by sickness to list the same, the assessor shall enter opposite the name of such person in an appropriate column the words "Absent" or "Sick." And any person not sick or absent who refuses to list property or take and subscribe the oath as required by this act, the property of such person shall be assessed as hereinafter provided, and the assessor shall return the same to the board of county commissioners, and the county board of assessment and equalization shall add fifty per centum to the amount as returned by the assessor, as the list of the person refusing to swear or affirm. The assessor is hereby authorized to administer oaths to all persons who by the provisions of this act are required to swear, or whom he may require to testify in any case, and he may examine upon oath any person whom he may suppose to have knowledge of the amount or value of the personal property of any person refusing to list or to verify his list of personal property.

2169. Number or name of school district to be given where property is assessed. [Ch. 28, '97.] § 34. It shall be the duty of assessors, when assessing personal property, to designate the number or name of the school district in which each person assessed is liable for tax, which designation shall be made by writing the number or name of the district opposite each assessment in a column provided for that purpose in the assessment book. When the personal property of any person is assessable in several school districts, the amount of each shall be assessed separately and the name of the owner placed opposite each amount.

2170. Failure to obtain assessment — duty of assessor. [Ch. 28, '97.] § 35. In all cases of failure to obtain a statement of personal property, from any cause, it shall be the duty of the assessor to ascertain the amount and value of such property and assess the same at such amount as he believes to be the true value thereof. The assessor when requested shall deliver to the person assessed a copy of the statement of property hereinbefore required, showing the valuation of the property so listed, which copy shall be signed by the assessor. The assessor of each district shall, on or before the fourth Monday in June of each year, file with the town or city clerk of each organized town or city, the assessment list or roll for such town or city, where it shall remain

subject to the inspection of the residents or property owners of such town or city until the Saturday following.

2171. Town board of review — duties — complaints and grievances.

[Ch. 28, '97.] § 36. The board of supervisors of each town, the recorder and president of each incorporated village, and the assessor, recorder and mayor of each city (except cities whose charters provide for a board of equalization) shall meet on the fourth Monday of June at the office of the town clerk or recorder for the purpose of reviewing the assessment of property in each town or district, and they shall immediately proceed to examine, ascertain and see that all taxable property in their town or district has been properly placed upon the list and duly valued by the assessor, and in case any property, real or personal, shall have been omitted by inadvertence or otherwise, it shall be the duty of the said board to place the same upon the list with the true value thereof, and proceed to correct the assessment, so that each tract or lot of real property and each article, parcel or class of personal property shall be entered on the assessment list at the true value thereof; but the assessment of the property of any person shall not be raised until each person shall have been duly notified of the intent of the board so to do, and on the application of any person considering himself aggrieved, they shall review the assessment and correct the same as shall appear to them just; any two of said officers are authorized to act at such meeting and they may adjourn from day to day until they shall finish the hearing of all cases presented on that day; provided, that they shall complete the equalization within six days. All complaints and grievances of individuals, residents of the town or district, in reference to the assessment of personal property, shall be heard and decided by the town board; provided, that the complaints of non-residents in reference to the assessment of any property, real or personal, and of others in reference to any assessment made after the meeting of the town board of review, shall be heard and determined by the county board.

2172. Notice of meeting of board of review to be posted. [Ch. 28, '97.] § 37. The assessor shall cause at least ten days' previous notice of the time and place of the meeting of the town board of review, by posting notice in at least three public places in each town or district; but the failure to give such notice or hold such meeting shall not vitiate such assessment except as to the excess of valuation of tax thereon shown to be unjustly made or levied.

2173. Assessor's statement and return to auditor. [Ch. 28, '97.] § 38. The assessors shall add up and note the amount of each column in their assessment books after making the corrections made

by the town board of review. They shall also make in each book, under proper headings, a tabular statement showing the footings of the several columns upon the page and shall add up and set down, under the respective headings, the total amount of the several columns, and on or before the first Monday in July, he shall make return to the county auditor of his assessment books and deliver therewith the lists and statements of all persons assessed, all of which shall be filed and preserved in the office of the county auditor. Such returns shall be verified by his affidavit and substantially in the following form:

STATE OF SOUTH DAKOTA, {
..... County, } ss.

I,, assessor of, do solemnly swear that the book to which this is attached contains a full list of all the real property (or personal property as the case may be) subject to taxation in, so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is in each case the true and full value of such property, to the best of my knowledge and belief (where the assessment has been corrected by the town board except as corrected by the town board), and that the footings of the several columns in said book and the tabular statement returned herewith is correct as I verily believe.

Subscribed and sworn to before me, this, Assessor.
..... day of, 18....

[L. s.] Auditor of County.

2174. List given to auditor for persons sick or absent. [Ch. 28, '97.]

§ 39. If any person required to list property for taxation is prevented by sickness or absence from giving to the assessor such statement, such person or his agent having charge of such property may, at any time before the extension of taxes thereon by the county auditor, make out and deliver to the county auditor a statement of the same as required by his act, and the county auditor in such case shall make an entry thereof and correct the corresponding item or items in the return made by the assessor, as the case may require; but no such statement shall be received by the county auditor from any person who refused or neglected to make oath to his statement when required by the assessor, as provided herein; nor from any person, unless he makes and files with the county auditor an affidavit that he was absent from his town or district without design to avoid the listing of his property, or was prevented by sickness from giving the assessor the required statement when called upon for that purpose.

2175. Auditor to examine assessment books and have returns corrected.

[Ch. 28, '97.] § 40. The county auditor shall carefully examine the assessment books when returned to him by the assessors, and if he discovers that the assessment of any property has been omitted he shall enter the same upon the proper list and forthwith notify the assessor

making such omission, who shall immediately proceed to ascertain the value of such property and make the necessary corrections.

Auditor authorized and required to list for taxation any property omitted from the assessment roll. *Grigsby v. Minnehaha County*, 6 S. D. 492; 62 N. W. Rep. 105.

May reinstate any property improperly stricken off as exempt. *Id.*

COUNTY BOARD OF EQUALIZATION.

2176. County board of equalization — meeting — duties. [Ch. 28, '97.] § 41. The county commissioners, or a majority of them, with the county auditor, shall form a board for the equalization of the assessment of the property of the county; they shall meet for this purpose annually, on the first Monday in July, at the office of the auditor, and having each taken an oath fairly and impartially to perform their duties as members of such board, they shall examine and compare the returns and assessment of the property of the several cities whether organized under general law or special charter, towns or districts of the county, and proceed to equalize the same, so that each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and full value, subject to the following rules:

First. They shall raise the valuation of each tract or lot of real property which in their opinion is returned below its true value to such price and sum as they believe to be the true and full value thereof, when in an unorganized civil township.

Second. They shall reduce the valuation of each tract or lot which in their opinion is returned above its true and full value to such price and sum as they believe to be the true and full value thereof, when in an unorganized civil township.

Third. They shall raise the valuation of each class or article of personal property which in their opinion is returned below its true and full value to such price and sum as they believe to be the true and full value thereof, and they shall raise the aggregate value of the personal property of each individual, whenever they believe that such aggregate valuation is less than the valuation of the taxable personal property of such individual to such amount as they believe was the true and full value thereof, when in an unorganized civil township.

Fourth. They shall upon complaint of any party aggrieved, being a non-resident of the town or district in which his property is assessed, reduce the valuation of each class of personal property enumerated in section sixteen aforesaid, which in their opinion is returned above its true and full value, to such price and sum as they believe to be the true and full value thereof, upon like complaint they shall reduce the

aggregate valuation of the personal property of such individual who, in their opinion, has been assessed at too large a sum, to such sum or amount as they believe was the true and full value of the personal property; provided, that the assessment of the property of any resident of the county shall not be raised until such person shall have been duly notified of the intent of the board to do so.

Fifth. They shall not reduce the aggregate value of the real property, or the aggregate value of the personal property of their county below the aggregate value thereof, as returned by the assessors, except as it may be necessary to make the valuation in the different townships equal with the additions made thereto by the auditor as hereinbefore required, but they may raise the aggregate valuation of such real property and of each class of personal property of said county, or any town or district thereof, whenever they believe the sum is below the true and full value of said property or class of property, to such aggregate amount as they believe to be the true and full value thereof.

Sixth. The county auditor shall keep an accurate journal or record of the proceedings and orders of said board, showing the facts and evidence upon which their action is based, and said record shall be published the same as other proceedings of county commissioners, and a copy of such published proceedings shall be transmitted to the auditor of the state, with the abstract of the assessment hereinafter required. The county board of equalization may continue in session, and adjourn from day to day, not exceeding five (5) days, commencing on the said first Monday of July.

Seventh. During the session of the said board of assessment and equalization any person or his attorney or agent feeling aggrieved by anything in the assessment roll, may apply to the board for the correction of any alleged errors in the listing or valuation of his property whether real or personal, and the board may correct the same as shall be just.

One who owns property subject to taxation presumed to know law governing board of equalization. *Billingshurst v. Spink County et al.*, 5 S. D. 84: 58 N. W. Rep. 272.

Knowledge of owner that property is added to assessment roll by board of equalization is notice of such fact. *Avant et al. v. Flynn, Treasurer*, 2 S. D. 153; 49 N. W. Rep. 15.

Act of city board of equalization striking from assessment rolls, as returned by the city assessors, the whole assessment of thirty-three acres of land valued at \$16,000, as exempt from taxation, such act was not authorized by section 1542, C. L., and not binding upon county board of equalization. *Grigsby v. Minnehaha County*, 6 S. D. 492; 62 N. W. Rep. 105.

Assessment must be based upon valuation as represented by the roll after being passed upon and adopted by the board of equalization. Assessment made before the equalization is void. *Dakota Loan & Trust Co. v. County of Codington*, 68 N. W. Rep. 314.

2177. Corrected lists — abstracts for state auditor. [Ch. 28, '97.]

§ 42. The county auditor shall calculate the changes of the assessment

lists determined by the county board of equalization, and make corrections accordingly. Having made such corrections of the real or personal lists, or both, as the case may be, he shall make duplicate abstracts of the same, one copy of which he shall file in his office and one copy he shall forward to the auditor of the state, on or before the fourth Monday of July following each county equalization, which abstract shall contain the following:

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 moneys and credits.

The total value of household furniture.

The total value of stocks or shares.

The total value of all other personalty not enumerated under the foregoing heads, and the number of polls.

STATE BOARD OF EQUALIZATION.

2178. State board of equalization — members of — meeting. [Ch. 28, '97.] § 43. The governor, auditor, secretary of state, state treasurer, attorney general, superintendent of public instruction and commissioner of school and public lands of the state shall constitute the state board of assessment and equalization. Said board of equalization shall hold a session at the seat of government commencing on the first Monday of August of each year. A majority of the members of said board shall constitute a quorum and have authority to act.

2179. Duties and powers of board. [Ch. 28, '97.] § 44. It shall be the duty of said board to examine and compare the returns of the assessment of the property of the several counties of the state, and proceed to equalize the same, so that all the taxable property in the state shall be assessed at its true and proportionate value; but said board shall not reduce the aggregate assessed valuation in the state; but may increase said aggregate valuation in such an amount as may be reasonably necessary to obtain a just and true value and equalization

of all the property in the state. The board may adjourn from day to day, and may employ such clerical assistance as may be deemed necessary to facilitate its labors. The state auditor shall issue warrants upon the state treasurer for all necessary expenses of said board of assessment and equalization on presentation of proper vouchers therefor approved by the governor.

State board of equalization are limited to the classified list furnished by county auditor, and "the total value of stocks or shares" being enumerated as one class. The state board of equalization have no power to raise the assessment on bank stock of a county without making the order general, so as to apply to all stocks or shares, even though no other stocks or shares be, in fact, listed in said county. *Campbell v. Minnehaha Nat. Bank of Sioux Falls*, 76 N. W. Rep. 10; *Coler et al. v. Sterling*, id. 12.

2180. Equalization of assessment, how to be done. [Ch. 28, '97.]

§ 45. Said board has the power and shall:

First. Equalize the assessment of land by adding to the aggregate assessed value thereof, in every county in which said board may believe the valuation to be too low, such rate per centum as will raise the same to its proper proportionate value and by deducting from the aggregate assessed value thereof, in every county in which said board may believe the valuation to be too high such per centum as will reduce the same to its proper [proportionate] value. Town and city lots shall be equalized in the same manner as herein provided for equalizing lands, and, at the option of said board, may be combined and equalized with lands.

Second. Equalize the assessment of personal property by adding to the aggregate assessed value of any class of personal property of every county in which they believe such valuation to be too low such rate per centum as will raise the same to its proper proportionate value and by deducting from the aggregate assessed value of any class of personal property, in every county in which said board may believe the valuation to be too high, such per centum as will reduce the same to its proper proportionate value.

Third. Said board, in making such equalization, may add to or deduct from the aggregate assessed valuation of lands, town or city lots or any other class of personal property throughout the state, such per centum as may be deemed by the board to be equitable and just, but in all cases of addition to or deduction from the assessed valuation of any class of property in the several counties, or throughout the state, the rate per centum of addition or deduction shall be even and not fractional.

Fourth. The state auditor shall keep a full record of the proceedings of the board and the same shall be published in the annual report of the auditor of the state.

Fifth. Said board shall decide upon the rate of the state tax to be levied for the current year, to defray the ordinary estimated expenses of the state for such year, and to pay any deficiency that may remain unpaid of the ordinary expenses of the preceding year, and also upon the rate of state tax to be levied to pay the annual interest and to provide for a sinking fund for the payment of the principal of the public debt of the state.

2181. State auditor shall transmit transcript of proceedings to each county auditor. [Ch. 28, '97.] § 46. On or before the fourth Monday in August, the auditor of the state shall transmit to each county auditor or county clerk a transcript of the proceedings of the board, specifying the per centum added to or deducted from the valuation of each class of real and personal property in the several counties in the state, and the county auditor shall add to or deduct from each tract or lot of real property in his county, the required per centum on the valuation thereof, as it stands after the same has been equalized by the county board of equalization, adding in each case any fractional sum of fifty cents or more, and deducting in each case any fractional sum of less than fifty cents, so that the value of any separate tract or lot shall contain no fraction of a dollar, and shall also add to or deduct from such class of personal property in his county the required per centum on the valuation thereof, as it stands after the same has been equalized by the county board of equalization, adding or deducting in manner as aforesaid any fractional sum so that the value of any separate class of personal property shall contain no fraction of a dollar.

2182. Board directed to make a levy of an annual state tax — other specific levies — rate, how determined. See § 2299a.

2183. Assessment of railroad property. [Ch. 28, '97.] § 48. All property, real and personal, belonging to any railway company in this state and necessarily used in the operation of its line or lines of railway in this state, shall be assessed for purposes of taxation by the

state board of assessment and equalization, and not otherwise; provided, nothing in this act shall be so construed as to prevent the local assessment and the taxation of all property of such company, both real and personal, as is not actually and necessarily used in the operation and maintenance of its lines of railway.

2184. Assessment, when to be made. [Ch. 28, '97.] § 49. It shall be the duty of the state board of assessment and equalization, on the third Monday of July, eighteen hundred and ninety-seven, and every year thereafter, to assess all the property of every railroad company in this state used in the operation and maintenance of their respective railways.

2185. Statement to be furnished to board of assessment. [Ch. 28, '97.] § 50. It shall be the duty of the president, secretary or other accounting officer thereto duly authorized, of any railroad company owning, leasing or operating any railroad within this state, to furnish said board on or before the first day of June, eighteen hundred and ninety-seven, and each year thereafter, a statement signed and sworn to by such officers, embracing and showing for the year ending April thirtieth, preceding:

First. The whole number of miles of main line or lines and branches thereof, owned, operated or leased in the state by the railroad company making the return, and the value thereof per mile.

Second. The number of miles of main line or lines and branches thereof, owned, operated or leased by such company, and the number of miles of side track, and the value thereof per mile, and the number and character of the buildings located in each county in the state and the value thereof.

Third. Also a statement of the number of engines, passenger, mail, express, baggage, freight and other cars owned by said company and used in operating such railroad in this state; and on roads having various lines and branches within the state, the returns shall show the actual amount of rolling stock owned by said company, in use on each

of said lines and branches within this state during the year for which the return is made.

Fourth. The gross and net earnings of the various lines and branches within this state during the year for which the return is made.

2186. Date of assessment. [Ch. 28, '97.] § 51. The valuation and assessment of the property of railroads by the said state board of assessment and equalization shall be made as of the first day of May, and shall be in the same ratio as that of the property of individuals, and such assessment by said board shall be made upon the main line or lines and branches thereof within the state separately, and shall include the right of way, roadbed, bridges, culverts, rolling stock, depots and depot grounds, yards, shops, buildings, gravel or sand beds, lands for snow protection, and all other property, real and personal, used in, and employed about, and incidental to the operation and maintenance of such railroads and branches thereof. In assessing said railroads and their equipment and property, the said state board of assessment and equalization shall take into consideration the gross and net earnings per mile for each division thereof, separately, for the year ending on the thirtieth day of April preceding, and any and all other matters necessary to enable them to make a just and equitable assessment of said railroad property, with respect to each county through which said railroad passes; provided, that the state board of assessment and equalization shall give at least ten days' notice of the time and place of its meeting provided for in this act, to the officer of any railroad, telegraph or telephone company, or other corporation, making a return of the property of their company to the said board for the purpose of assessment and taxation of every increase, made by said board in the valuation of any of the property returned, as aforesaid, for the purposes aforesaid, or of any addition made to said returns, and said companies shall have the right to appear and be heard before said board in all matters relating to the assessment of the property of said company.

2187. Statement furnished to county boards. [Ch. 28, '97.] § 52. The state board of assessment and equalization shall transmit to the board of county commissioners of each county through which any of said roads or branches thereof run, a statement showing the length of main track of main line or lines, and branches thereof, within such county, and the assessed value per mile of said main line or lines and branches, as fixed by a pro rata distribution per mile of the assessed

value of the whole property named in sections fifty and fifty-one, of this act, and said statement shall be entered upon the proper records of said several counties.

2188. Duty of county commissioners. [Ch. 28, '97.] § 53. It shall be the duty of the board of county commissioners of said counties, at their first meeting after receiving such statement, to make and enter in the proper records an order, stating and declaring the length of the main track of road and branches and assessed value of such roads and branches lying within each city, incorporated town, township, and lesser taxing district, in each county through or into which said road or branches thereof run, as fixed by the distribution of the amount assessed by the state board of assessment and equalization, which aforesaid amount shall constitute the taxable value of said property for all taxable purposes, and shall transmit a copy of said order to the city council or trustees, of each city or incorporated town or townships, and the proper officer of each lesser taxing district, and also to said railway company.

2189. Railroad property taxable pro rata with other property. [Ch. 28, '97.] § 54. All such railroad property so assessed by said state board of assessment and equalization shall be taxable upon said assessment at the same rates and for the same purposes as the property of individuals within such counties, cities, incorporated towns, townships, and lesser taxing districts. The proper officer of each taxing district shall certify to the county auditor, the several rates of taxes to be levied in said district, and the said county auditor shall extend the taxes against said assessment in a book to be called the "railroad tax book," and shall transmit a copy of the rates and taxes so extended to each railroad company.

Law requiring railroad companies to pay a certain per centum of their gross earnings in lieu of other taxes is unconstitutional, so far as it taxes inter-state commerce—that is, earnings beginning without and terminating within the territory. Northern Pac. R. R. Co. v. Raymond, 5 S. D. 856; 40 N. W. Rep. 538.

2190. Duty of county auditor and treasurer. [Ch. 28, '97.] § 55. The county auditor shall make and deliver a duplicate of said railroad tax book to the county treasurer, and the county treasurer shall be charged with the collection of said railroad taxes in the same manner and under the same provisions and restrictions that are imposed upon

such treasurer in the collection of the taxes of individuals; and the amount due each city, incorporated town, township, or lesser taxing district, shall be paid over, when collected by the county treasurer, to such city, town, township or lesser taxing district.

2191. General law applicable. [Ch. 28, '97.] § 56. All laws in force relating to the enforcement of the payment of delinquent taxes shall be applicable to all taxes levied under the provisions of this act, and whenever any taxes levied under the provisions of this act shall become delinquent, the county treasurer having control of such delinquent taxes shall proceed to collect the same in the same manner, and with the same right and power, as a sheriff under execution except that no process shall be necessary to authorize him to sell engines, cars or any other rolling stock, for the collection of said taxes.

2192. Railroad companies to furnish maps to county auditor. [Ch. 28, '97.] § 57. Every railroad company shall file with the county auditor of each county, through or into which its line or lines of railroad run, a map showing the right of way, depot grounds, yard room, gravel or sand beds, and lands for snow protection, and lands otherwise used by it in the maintenance and operation of its railway at the date of filing such map, showing lots or parts of lots and blocks in cities and towns and the number of acres in each government subdivision, and it shall be the duty of the county auditor to provide for the exception from assessment by the local assessor, all such right of way, depot grounds, yard room, gravel or sand beds, and lands for snow protection, or lands otherwise used in the operation and maintenance of its railway. It shall be the duty of the county register of deeds to notify such county auditor of any deed to any railway company for the right of way, depot grounds, yard room, gravel or sand beds, or lands for snow protection, et cetera, et cetera, that may be filed in his office for record, so that the same may be entered by such county auditor on said map for the purpose above mentioned.

2193. When company fails to make statement. [Ch. 28, '97.] § 58. In case the proper officer of any railway company shall fail to make the statement under oath herein named, the state board of assessment and equalization shall proceed to assess such railroad property on the best information obtainable, and shall add twenty-five per centum to the assessable value thereof.

2194. Telegraph and telephone companies. [Ch. 28, '97.] § 59. It shall be the duty of the president, secretary, general manager or superintendent of every telegraph or telephone company doing business in this state to furnish to the state auditor on the first day of July, eighteen hundred and ninety-seven, and of each year thereafter, a statement under oath in such form as the auditor may prescribe, showing the following facts:

First. The total number of miles owned, operated or leased within the state, the number of miles in each separate line or division thereof together with the number of separate wires thereon, and stating the counties through which the same extend or in which such company does business.

Second. The number of miles in each county and the number of stations and number of telegraph and telephone instruments used in each county.

Third. The average number of poles per mile used in constructing said lines, the value of said wires, poles, instruments and all other property owned by it in the state.

Fourth. The number of offices maintained by the company in this state and the total gross and net receipts of all said offices for the year ending April thirtieth, preceding the making of said statement.

Such statement shall be made according to such forms and instructions as may be prescribed by the state auditor and with reference to lines owned and operated on the first day of May of the year for which the return is made.

2195. State auditor's duty. [Ch. 28, '97.] § 60. If said statement shall not be received by said auditor by the first Monday of August of each year, he shall thereupon proceed to obtain the facts and information aforesaid in any manner that may appear most likely to secure the same correctly. The statement so filed or the information so obtained shall be laid before the state board of assessment and equalization, which board shall review such statement or information, and may change the valuation given or add to said statement any property omitted therefrom, and said board shall proceed to levy a tax on said property, which tax shall be equal to the average amount of state, county, school and municipal taxes levied upon other property for the preceding year, and the auditor shall notify each company of the amount of taxes so levied. Each telegraph and telephone company so assessed shall, on or before the first day of March in each year, pay to

the state treasurer the amount of tax so levied on its property, which shall be in lieu of all other taxes. If any telegraph or telephone company shall fail to make and file said statement each year as herein provided, or shall file a false statement it shall forfeit to the state not less than five hundred dollars nor more than five thousand dollars, to be recovered in the name of the state in any court of competent jurisdiction. The state board of equalization shall cause a statement to be transmitted to the county auditor of each county in which any lines or office or other property of any telegraph or telephone company is situated, showing the amount or proportion of such property and value thereof situated in such county and the state treasurer shall remit to the treasurer of each of such counties their proportionate share of such tax, and said county treasurer shall apportion the same as provided in other cases.

2196. Telegraph and telephone property assessed, when. [Ch. 28, '97.] § 61. It shall be the duty of the state board of assessment and equalization on the fourth Monday of July, eighteen hundred and ninety-seven, and each year thereafter to assess all the property of every telegraph and telephone company doing business in this state and used in the operation and maintenance of its business, and in so doing they shall assess the same as of the first day of May of said year and may also take into consideration all the facts, data and information contained in the statement made by said company and any and all matters necessary to enable them to make a just and equitable assessment of said property in the same ratio as the property of individuals.

2197. Assessment roll, what to contain. [Ch. 28, '97.] § 62. In the abstracts of the assessment roll forwarded by the various county auditors of the state each year they shall include the rate of taxation for county, school and municipal purposes in such county.

2198. Express and sleeping car companies, how assessed. [Ch. 28, '97.] § 63. Every express company and every sleeping car company doing business in this state must transmit to the auditor of the state a statement of its business done within this state for the year ending on the thirtieth day of April preceding, which statement must be furnished on or before the first day of July of each year and shall contain the following items:

First. The total number of employes engaged by such company within the state and the number thereof in each county.

Second. The total number of offices maintained by it within the state and the number thereof in each county; the value of all office furniture, fixtures and real estate owned by it within this state.

Third. The number of miles of railroad over which such express or sleeping car company conducts its business within the state and the number of miles thereof in each county.

Fourth. The total number of express cars or sleeping coaches owned by such company and used within the state and the number of such express or sleeping cars leased and controlled, but not owned by such company, and used within this state or operated under lease or contract in any manner.

Fifth. The gross earnings of the total business of such company transacted within this state for the year ending April thirtieth preceding and the value of all the property of such company used in this state.

2199. State board of assessment and equalization to assess. [Ch. 28, '97.] § 64. If the statement aforesaid shall not be received by the said auditor by the first day of August of each year, he shall thereupon proceed to obtain the facts and information aforesaid in any manner that may appear most likely to secure the same correctly. Said property shall be assessed by the state board of assessment and equalization and not otherwise. Said board shall value and assess said property as of the first day of May of said year and in assessing said property shall take into consideration the gross earnings of said company within the state for the year ending on the thirtieth day of April preceding, and any and all other matters necessary to enable them to make a just and equitable assessment of said property, in the same ratio as the property of individuals. The statement so filed or the information so obtained shall be laid before the state board of assessment and equalization, which board shall review said statement or information and may change the valuation given or add to said statement any property omitted therefrom, and said board shall levy a tax on said property, which tax shall be equal to the average assessment of state, county, school and municipal taxes levied upon other property for the preceding year, and the auditor shall notify each company of the amount of taxes so levied.

It is the duty of state board of equalization and assessment to assess property of express companies within this state. *State ex rel. American Express Co. v. State Board of Assessment and Equalization*, 8 S. D. 888; 58 N. W. Rep. 142.
Proceedings of board conclusive. *Id.*

2200. Payment of tax, when made. [Ch. 28, '97.] § 65. Each express and sleeping car company so assessed shall on or before the first day of March of each year, pay to the state treasurer the amount of tax so levied on its property for the year preceding, which shall be in lieu of all other taxes.

2201. Forfeit in event of failure to file statement. [Ch. 28, '97.] § 66. If any express or sleeping car company aforesaid, shall fail to make and file said statement, it shall forfeit to the state not less than five hundred nor more than five thousand dollars, to be recovered in the name of the state in any court of competent jurisdiction.

2202. When assessed. [Ch. 28, '97.] § 67. It shall be the duty of the state board of assessment and equalization on the first Monday of July, eighteen hundred and ninety-one, and each year thereafter, to assess all the property of every express and sleeping car company doing business in this state, and used in the operation and maintenance of its business aforesaid.

2203. How apportioned. [Ch. 28, '97.] § 68. The state treasurer shall apportion the amount of taxes received under the provisions of this act, between the state and the various counties in which such company is doing business, as herein provided, the amount to which each is entitled shall be determined by said state board of equalization.

2204. County tax, when levied. See § 2299a.

2207. County auditor to make out tax list. [Ch. 28, '97.] § 72. As soon as practicable after the taxes are levied, the county auditor shall make out a tax list for each assessor district in such county containing: First, a list in alphabetical order, of all 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 the several species of taxes, and the total of all the taxes, shall be carried out in separate columns opposite the valuation. Second, a list of all the taxable lands in the district (not including town lots), in numerical order commencing with the lowest numbered section, in the lowest numbered township and range, with the names of the persons or parties in whose name such subdivision was listed, opposite each

subdivision on the margin, or in a column provided for that purpose, with valuation of each tract and the several species of tax 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 or composing such district, commencing with the lowest number and ending with the highest number in each city or town, with the names of the person or party listing each lot, or part of lot, opposite the same, and the valuation and several species of taxes, and the total taxes carried out in separate columns, in the same manner as hereinbefore provided in respect to personal property and lands; provided, that in all cases the state, county and all other taxes that are uniform throughout the county may be consolidated and entered in one column which shall be called "consolidated tax," and the rate per centum of the various taxes so consolidated, shall be scheduled on the first page of each tax list and on each tax receipt. The county auditor shall foot each and every column of taxes and prove the same so that they each shall aggregate the same as the footing of the column of total taxes, and shall recapitulate the same. Such recapitulation shall show the total amount of taxes for each specific purpose for which a levy has been made, and the aggregate of such taxes upon the lands, town lots and personal property separately.

2208. Form of tax list. The tax list and duplicate shall be as nearly as practicable in the following form, to wit:

TAX LIST FOR 18.....COUNTY, SOUTH DAKOTA.

NAMES.	Part of section.....	Section	Township	Range	Acres	Value	Name of town	Lot	Block	Value	Personalty	Territorial tax	County tax	County sinking fund tax	L. and road tax	Poll tax	District school tax	Total	REMARKS.
	

[C. L. 1595.]

2209. Tax list to be kept with auditor, who shall prepare duplicate. [Ch. 28, '97.] § 73. The tax list when completed shall be kept by the auditor as the property of the county. The auditor shall also prepare

duplicates of the tax lists of his county and deliver the same to the county treasurer, on, or before the fifteenth day following the date of the levy for the current year; and the county treasurer shall, immediately upon the receipt of such duplicate tax list, specify, in a column for that purpose, the years for which any of the real estate described therein has been sold for taxes and not redeemed, and shall then return such duplicates to said auditor.

2210. Tax list to be in duplicate. [Ch. 28, '97.] § 74. The tax list when completed shall be kept by the county auditor as the property of the county. The auditor 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 December, following the date of the levy for the current year, and the county treasurer shall immediately upon receipt of such duplicate tax list, specify in a column for that purpose the years for which any of the real estate described therein has been sold for taxes and not redeemed.

2211. Entry of district in tax list. [Ch. 28, '97.] § 75. An entry is required to be made upon each tax list and its duplicate, showing what it is, and for what township or district and county and year it is; and the county auditor shall attach to each list for an organized township or city, his warrant, under his hand and official seal, in general terms, requiring the treasurer of such township or city to collect the taxes therein levied, according to law and retain in his hands the amounts receivable by law into the township or city treasury, for the purposes therein specified, and to account for and pay over to the county treasurer the amounts therein specified for the state and county purposes, on or before the first day of March, and to account for and pay over to the school treasurer of such township, district or city, the amounts therein specified for township or district school purposes, on or before the first day of March. And he shall attach to each list for districts not included in organized townships or cities, such warrant, requiring the county 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.

2212. Notice to township treasurer. [Ch. 28, '97.] § 76. The county auditor, on or before the twentieth day of November in each year, shall notify the township treasurer of each organized township and the city treasurer of each city in such county, of the amount of state, county and school taxes, as apportioned to his township or city. And such treasurer, on or before the first day of December, shall give to the county auditor a bond running to the county in double the amount of such state, county and school taxes, with sufficient sure-

ties, to be approved by the chairman of the township supervisors and the county auditor, conditioned that he will pay over to the county treasurer, as required by law, all township or district school taxes, which he shall collect during his term of office, and duly and faithfully perform all the other duties of his office. The county auditor shall file and keep safely such bond in his office.

2213. Duplicate tax list to township treasurer. [Ch. 28, '97.] § 77. On the filing of such bond the county auditor shall deliver to the township or city treasurer filing the same, the duplicate tax list for his township or city, with the warrant attached, and take receipt therefor. He shall also on or before the first day of December deliver to the county treasurer the duplicate tax lists, with the warrants thereto attached, for the districts not included in the organized townships or cities, and such warrant shall be full and sufficient authority for the collection by such treasurer of all taxes therein contained.

2214. Charge treasurer with tax list. [Ch. 28, '97.] § 78. The county auditor shall, immediately after delivering said lists to said treasurers, charge each treasurer with the amount of the lists so delivered to him, as shown in the recapitulation thereof in a book prepared for that purpose. And he shall also charge each treasurer in such tax list account with all additional assessments made after such lists are delivered, and shall credit him with all amounts collected thereon, with all abatements ordered by the board of county commissioners, and with the uncollectible delinquent list, when returned and approved by the board of commissioners.

2215. County treasurer to be collector of taxes except as otherwise provided. [Ch. 28, '97.] § 79. The county treasurer shall be the collector and receiver of all taxes extended upon the tax list of the county, and all delinquent taxes whether levied for county, state, city, town, school, poor, bridge, road or other purposes, anything in the charter of any city or town to the contrary notwithstanding, and also all forfeitures, fines and penalties received by any person or officer for the use of the county, and he shall proceed to collect the same according to law, and place the same when collected to the credit of the proper funds; but this provision shall not be construed so as to include any fines or penalties accruing to any municipal corporation for the violation of its ordinances, and which were recovered before any city justice; and it shall not apply to the collection of any taxes extended upon the tax list of any township, city or district, the collection of which is by this act required to be made by the treasurer of such township, city or district while such list remains in the hands of such township or city treasurer for collection.

2216. Taxes payable in warrants. [Ch. 47, '99; ch. 28, '97.] § 80. State warrants are receivable for the amount payable into the state treasury on account of the ordinary state tax, and county warrants are receivable at the treasury of the proper county for the amount of county tax payable into the county treasury except when otherwise provided by law, and city warrants shall be receivable on city taxes and school warrants shall be received for school taxes and civil township warrants shall be received for civil township taxes, and road and bridge warrants shall be received for road and bridge taxes in the district or township, where such warrants are issued, provided that no warrants shall be so receivable unless offered by the person originally owning the account or to whom the warrant was originally issued and in payment of his own tax.

2217. Duty of township and city treasurers in collection of taxes — fees. [Ch. 28, '97.] § 81. On receiving such tax list with the warrant attached, the township treasurer or the city treasurer, as the case may be, shall proceed to collect such taxes. He shall remain at his office at some convenient place within such township or city, on every Friday in December, thereafter, from nine o'clock A. M. till 5 o'clock P. M. to receive taxes; provided, however, that he shall receive taxes on any week day when they may be offered, and on all sums voluntarily paid before the tenth day of January of the succeeding year, he shall [retain two per cent for collection fees, and for all taxes paid on or after said tenth day of January, he shall add two per cent to the tax for collection fees and may also retain an additional two per cent of such taxes for collection fees. In case he is apprehensive of the loss of any personal tax, he may take steps to enforce its collection at any time, and if compelled to seize any property before the tenth day of January may add four per cent for collection fees. All taxes shall be collected before the first day of March].

2218. Treasurer's duty in collecting tax of non-resident. [Ch. 28, '97.] § 82. For the purpose of collecting the taxes remaining unpaid on the tenth day of January, the township or city treasurer, as the case may be, shall, during the next thirty days, call upon each person liable to pay taxes, personally, if a resident of such township or city, or at his usual place of residence or business therein, and demand payment of the taxes charged against him. If such person is not a resident of such township or city, but resides within the county, and his residence is known to the treasurer, he shall make such demand, either personally or by mail. If demand is sent by mail, the amount of the tax shall be stated and the place where and when it may be paid. He shall give a receipt for every tax paid, and shall enter the fact of payment and the date thereof on the tax list. In case of any tax assessed upon the shares of any capital stock of any bank, he shall call upon the cashier of such bank, and demand payment thereof; and thereupon it

shall be the duty of such cashier to pay the same and charge the amount so paid against the shares of the stock so taxed.

2219. Duplicate receipts made out. [Ch. 28, '97.] § 83. Whenever any taxes are paid to the county treasurer he shall make out duplicate receipts for the same, which duplicate receipts shall correspond in number, date and 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 week, be filed by the treasurer with the auditor, and such duplicate receipt 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 as extended upon the tax duplicate, and whether the said separate or distinct funds were paid in cash, state, county, or school warrants or road orders, or supervisor's receipts as the case may be. Such duplicate receipts shall also specify the years for which any of the real estate described therein has been sold for taxes and not redeemed.

2220. Treasurers collect oldest tax first. [Ch. 28, '97.] § 84. The county treasurer in collecting taxes shall collect the oldest tax first, and shall in no case issue his receipt for the current year until all prior taxes are paid, except in cases where the taxpayer makes and files with the county treasurer his affidavit stating that he has a legal defense to the collection of such former tax, in which case the treasurer shall note in any subsequent receipt the making of such affidavit stating the amount and year covered thereby.

"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," is a personal right, and no third party can complain. *Frost et al. v. Flick*, 1 S. D. 131; 46 N. W. Rep. 508.

Lien for taxes is not lost by purchase of land at tax sale by county. *Rochford v. Flemming*, 71 N. W. Rep. 317.

"Sold for taxes, 1893," is notice of such sale, and receipt so indorsed is not receipt for prior taxes. *Id.*

2221. Receipt evidence payment of prior taxes. [Ch. 28, '97.] § 85. The possession of a tax receipt upon property so listed, issued by the county treasurer under the provisions of this and the preceding section, shall be conclusive evidence that all prior taxes which are chargeable against the lands, in such receipt described, or in case of a personalty tax against the person named in such receipt, have been fully paid and shall be a bar to the collection of any prior tax thereon, unless otherwise stated in the receipt.

2222. Collection by distraint. [Ch. 28, '97.] § 86. If any person shall neglect or refuse to pay any tax assessed to him, the township

treasurer or other treasurers charged with its collection, shall collect the same by seizure of personal property of such person to an amount sufficient to pay such tax with accrued penalty and interest and all accruing costs, wherever the same may be found in the county, from which seizure no property shall be exempt except personal property absolutely exempt from execution, and shall immediately proceed to advertise the same in three public places in the county where such property is taken, stating the time when and the place where such property will be sold. And if the taxes for which such property is distrained and the costs which accrue therein, are not paid before the day appointed for the sale, which shall not be less than five nor more than ten days after the taking of such property, such treasurer shall proceed to sell such property at public vendue, or so much thereof as will be sufficient to pay such taxes, penalty and costs of such distress and sale. The treasurer may adjourn such 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 in case of adjournment, he shall put up a notice thereof at the place where such sale was to have taken place. Any surplus remaining above the taxes, charges for keeping, fees for sale, fees for levying on the property and mileage as allowed by law, shall be returned to the owner, and the treasurer shall, on demand, render an account in writing of the sale and charges. If the property so distrained cannot be sold for the want of bidders, the treasurer shall return a statement of the person from whom he took the same, and such tax shall be returned as unpaid.

2223. Auditor to audit duplicate. [Ch. 28, '97.] § 87. It shall be the duty of the auditor, 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 auditor 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.

2224. Receipts numbered consecutively. [Ch. 28, '97.] § 88. All tax receipts issued by the county treasurer shall be found in books of convenient size and numbered consecutively, commencing with number one on the first receipt issued for the taxes for any one year, and he shall not receipt for more than one year's taxes on the same property in one tax receipt, nor shall more than one series of numbers be used

for any one year's taxes, but a separate and distinct series of numbers of receipts shall be kept and issued for the taxes of each year for which the same have been levied and assessed in this state.

2225. What written on duplicate. [Ch. 28, '97.] § 89. Whenever any taxes are paid, the treasurer shall write on the tax duplicate, opposite the description of the real estate or the 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 auditor, on receiving the duplicate receipt, shall forthwith make the same entries on the tax list in his possession.

2226. Treasurer must keep cash book. [Ch. 28, '97.] § 90. 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 state, 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 made consecutively and in the numerical order of the receipts issued therefor.

2227. Money from licenses, fines, etc. [Ch. 28, '97.] § 91. Whenever the treasurer receives any money, warrants or orders on account of licenses, fines or other account except taxes charged on the tax duplicate, he shall make out and deliver to the person paying the same duplicate receipts, one of which receipts said person shall forthwith deposit with the county auditor, in order that the treasurer may be charged with the amount thereof. The treasurer shall then enter the same in his cash book provided for in the preceding section, as in case of money received for taxes, but in a separate and distinct series of numbers of receipts issued therefor; and no person shall receive such license or be discharged from obligation by reason of such fine or account until he shall have so delivered such duplicate receipt to the county auditor.

2228. Treasurer's account book. [Ch. 28, '97.] § 92. The treasurer shall keep an account current in which he shall charge himself with all amounts received whether in money or warrants as shown by

his cash book, and credit himself with all disbursements by him made as shown by his warrant or voucher record. He shall also on the first day of each month credit each and every fund with the amount collected for said fund during the preceding month, and shall charge each fund with all amounts paid out on account of said fund and with his commissions for the collections made therefor. He shall also at the same time balance each and every account so as to show the total cash on hand and the balance remaining to the credit of each and every fund.

2229. Auditor to keep duplicate books. [Ch. 28, '97.] § 93. The county auditor is required to keep duplicates of the treasurer's cash book and ledger and make all entries therein in the manner and form herein required of the county treasurer and the method of bookkeeping and accounting shall be uniform throughout the state.

2230. Monthly settlements required. [Ch. 28, '97.] § 94. On the first day of each month the county treasurer shall turn over to the county auditor all vouchers for disbursements made by him during the preceding month, taking the auditor's receipt therefor, and the auditor shall forthwith charge the proper funds therewith, and within ten days thereafter the auditor and treasurer shall compare their cash book and ledger balances, and the auditor shall immediately thereafter on the application of any township, city, village or school treasurer deliver to such treasurer an order on the county treasurer for the amount due such township, city, village, school district or school township; provided, that the person so applying shall file with the auditor a certificate from the proper officer showing that such person is duly elected or appointed treasurer and has given bond as required by law.

2231. When treasurer shall pay over funds collected. [Ch. 28, '97.] § 95. The county treasurer shall immediately after each settlement pay over to the treasurer of any municipal corporation or any organized township, or any body politic, on the order of the county auditor, all moneys received by him arising from taxes levied and collected, belonging to such municipal corporation or organized township, body politic, or school township or district, and shall require said treasurer to whom such payment is made to receipt upon the back of said order for the same.

2232. Errors and omissions corrected. [Ch. 28, '97.] § 96. 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 auditor, 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.

2233. Treasurer must keep warrant book. [Ch. 28, '97.] § 97. Each county treasurer shall keep a book called the "warrant book."

2234. Demand not necessary. [Ch. 28, '97.] § 98. No demand of taxes shall be necessary in order to fix the liability of the person against whom they are assessed, but it shall be the duty of every person subject to taxation under this law, to attend at the office of the treasurer having charge of the collection of such taxes and pay his taxes; and if any person neglect so to attend and pay his taxes until after the first day of February in the year next succeeding the levying of the taxes, such treasurer is directed and required to collect the same by distress and sale; provided, that if any person having personal property assessed upon which the taxes are unpaid shall, in the opinion of the treasurer, be about to remove out of the county, it shall be the duty of such treasurer to collect such taxes at any time after the tax duplicate has been placed in his hands. And whenever any personal property having been assessed to any person in any township or city of this state shall be removed therefrom before the taxes assessed thereon shall have been collected, and there being no other personal property sufficient in such township or city whereon the treasurer can levy and collect said taxes, he shall have full power and it shall be his duty to make a statement, duly certified by him to be correct and true, showing that personal property has been assessed to such person, naming him, the valuation thereof, the various taxes thereon and the total thereof as appears from the list in the hands of such treasurer and that such property has been removed from such township or city since the assessment thereof, and that the taxes have not been paid, which statement shall be witnessed and acknowledged in the same manner as deeds of real estate are witnessed and acknowledged, and shall be received in all courts and other places as evidence of the facts therein contained, without proof of its execution, and shall be prima facie evidence of the validity of the taxes therein named, and shall be full and ample authority to the treasurer or other tax collector to whom it may be sent, to levy and collect the same in the same manner as other personal taxes are collected by him, when spread upon his own tax list. Such statement may be sent to the township or city treasurer or other collecting officer of any township, city or district in the state where the person against whom such assessment was made may have property, and the township treasurer or

other collecting officer to whom such statement shall have been transmitted shall, upon receipt of the same, proceed to collect said taxes out of any property belonging to the owner of the property so taxed as aforesaid within his jurisdiction liable to be seized for taxes, together with double collection fees therefor, and the further sum of twenty-five cents to defray the expense of transmitting the taxes so collected as hereinafter provided, and shall give his receipt therefor. The said township treasurer or other collecting officer shall thereupon transmit the taxes and one-half of the collecting fee as aforesaid collected, to the township treasurer or other collecting officer from whom he received such statement and the latter shall upon the receipt of such taxes and collection fees mark the said taxes as paid upon his tax list and the date of the receipt of the same, retaining the fees so received as aforesaid, as his fees in the matter of the collection of said taxes.

2235. Taxes on real property perpetual lien. [Ch. 28, '97.] § 99.

Taxes upon real property are hereby made a perpetual lien thereupon against all persons and bodies corporate, except the United States and the state of South Dakota, and taxes due from any person upon personal property shall be a lien upon any real property owned by such person, or to which he may acquire title, but such lien shall not be enforced against such real estate until after the filing of the county treasurer's return, showing that he is unable to make such taxes out of the personal property of the person owing such tax as provided in this act. All taxes shall become due on the first day of December of each year, and as between vendor and vendee shall become a lien upon real estate on and after said date; provided, that nothing in this act shall be so construed as to prevent the county treasurer from advertising the amount due on personal property tax against the real estate which would be liable for the same if uncollected or uncollectible from personal property of the person assessed.

2235a. Removal of buildings. [Ch. 45, '99.] § 1. It shall be unlawful for any person or persons to move any building or buildings

off of any lots in incorporated cities, towns and villages upon which taxes have been levied until after such taxes have been fully paid, and in case such building or buildings are removed without the payment of such taxes, then such taxes shall be a lien upon the building or buildings so removed, as well as upon the lots in incorporated cities, towns and villages.

2235b. Penalty. [Ch. 45, '99.] § 2. Any person violating the provisions of section 1 of this act shall be guilty of a misdemeanor.

2235c. Denuding of timber. [Ch. 46, '99.] § 1. It is hereby declared unlawful for any person, having made final proof on any tract of timber land under the laws of the United States, or any person being the owner of any timber land in this state by purchase or otherwise, to denude such timber land of the timber thereon without paying the taxes on such land. And any person guilty of a violation of this act shall be guilty of a misdemeanor and punishable as provided by law.

2235d. Duty of commissioners. [Ch. 46, '99.] § 2. It shall be the duty of the county commissioners of any county in this state, who receive information that any person owning such timber land is cutting the timber thereon, for the purpose of denuding the same of timber, and who is in arrears in the payment of his taxes thereon, to order the county treasurer of their county to levy on any cut timber or other wood found on such land for taxes, the same as levy is made on personal property, and sell the same for such taxes.

2236. Taxes delinquent, when. [Ch. 28, '97.] § 100. On the first day of March of the year after which taxes shall have been assessed, all unpaid taxes shall become delinquent, and shall draw interest and penalty as follows: On the said first day of March one (1) per centum shall attach and be added on the amount so remaining unpaid, and one (1) per centum a month thereafter until paid, to be added on the

first day of each month, which shall be added to the amount assessed, and collected by the county treasurer; providing, that nothing in this section shall apply to the taxes of eighteen hundred and ninety.

Taxpayer may apply to a court of equity for protection against seizure and sale of his personal property in satisfaction of tax unlawfully or wrongfully assessed. *Knapp v. Charles Mix County*, 7 S. D. 899; 64 N. W. Rep. 187.

2236a. Taxes delinquent, when. [Ch. 42, '99; ch. 18, '93; ch. 14, '91.] “§ 97. On the first day of March of the year after which taxes shall have been assessed all unpaid taxes shall become delinquent, and shall draw interest and penalty as follows: On the first day of March one (1) per cent shall attach and be added on the amount so remaining unpaid, and one (1) per cent a month thereafter, until paid, to be added on the first day of each month, which shall be added to the amount assessed, and collected by the county treasurer. Provided, that if any person shall pay one half of the amount of taxes due from him on or before the first day of March of the year after which such taxes shall have been assessed, the balance shall not become delinquent until the first day of October thereafter, upon which day, if not paid, a penalty of one (1) per cent a month thereafter until paid, to be added on the first day of each month which shall be added to the balance unpaid and collected by the county treasurer; and said treasurer shall make sales for the balance of unpaid taxes in such cases in the same manner as in cases where no part of the tax has been paid.”

Except installment provision is same as laws '95 and '97—no reference to '97 law is made in act—is this law in force?

2237. Selling realty for personal tax. [Ch. 28, '97.] § 101. In case of failure to collect any personal tax by voluntary payment by the party assessed or by distress and sale, the county treasurer must collect the same by advertising and selling any real estate against which the tax is a lien.

No lien for taxes except as expressly given by statute, and no greater latitude is allowed than is expressly given. *Miller v. Anderson et al. and Spink County*, 1 S. D. 589; 47 N. W. Rep. 957.

After payment of legal taxes, owners may restrain collection of that part which is illegal. *Macomb v. Lake County*, 70 N. W. Rep. 652; *Dakota Loan & Trust Co. v. Coddington County*, 68 Id. 314.

Sale of land for personal tax is authorized. *Iowa Land Co. v. Douglas County et al.*, 8 S. D., 491; 67 N. W. Rep. 52.

County commissioners have no authority to release land from personal tax. *Id.*
Proceedings to enforce tax on land is not an action on liability created under limitation statute and not barred in six years. *Id.*

Failure of auditor to carry forward the amount of such taxes does not affect the validity of tax nor lien therefor. *Id.*

2238. Resistance to treasurer — penalty. [Ch. 28, '97.] § 102. 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 of 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.

2239. New treasurer appointed, when. [Ch. 28, '97.] § 103. In case any township or city treasurer shall neglect to give either of the bonds required or shall die, resign or remove out of the township or city or become unable to discharge the duties of his office the township board or city council shall immediately appoint a new treasurer, who, on giving the required bonds, shall execute the office for the remainder of the year. The township clerk or city auditor shall immediately notify the county auditor and county treasurer of such appointment.

2240. Failure of township treasurer to file bond. [Ch. 28, '97.] § 104. In case the township treasurer or city treasurer shall neglect to file his bond with the county auditor, in the manner and within the time prescribed by law, and the township board or the city council shall fail to appoint a treasurer who shall give such bond by the tenth day of December, the county auditor shall deliver the tax list with a warrant directed to the sheriff of the county, who shall, before he receives such tax list, execute and deliver the bonds as required of the township or city treasurer, and make like collections and returns, and shall be entitled to the same compensation allowed to township treasurers, on all taxes so handed over to him for collection; and for the purpose of collecting the same, shall be vested with all the power conferred upon the township treasurers; and suit may be brought on

such sheriff's bond, under the same circumstances as on those of the township treasurer.

2241. Penalty for false list. If any person shall wilfully make or give under oath or affirmation a false list of his, her or their taxable property, or a false list of the taxable property in the use or possession or under the control of him, her or them, and required by law to be listed by him, her or them, such person shall be deemed guilty of perjury; and upon conviction thereof shall be punished therefor as is by law provided for the punishment of perjury. [C. L. 1552.]

ARTICLE 9. ASSESSMENT ROLL.

2242. Making and delivery. On or before the first Monday of July, annually, the several county and township assessors shall make out and deliver to the county clerk an assessment roll consisting of the following items, to wit:

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. Also stating the number of the school and road district in which such property and the owner thereof is situated. Such list shall be as nearly as practicable in the following form:

RETURN OF TAXABLE LANDS IN COUNTY, SOUTH DAKOTA, AS ASSESSED FOR THE YEAR 18.

Part of section.	Section.	Township.	Range.	Acres.	Value.	Owners' name.

2. 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:

RETURN OF LOTS IN THE CITY (OR TOWN) OF IN COUNTY, SOUTH DAKOTA, ASSESSED FOR THE YEAR 18.

Block.	Lot.	Value.	Owner.

3. 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, SOUTH DAKOTA, ASSESSED FOR THE YEAR 18..

NAMES.	Merchandise.	Manufactures.	Horses.	Value.	Mules and asses.	Value.	Cattle.	Value.	Sheep.	Value.	Swine.	Value.	Carriages.	Value.	Money and credits.	Household furniture.	Stock or shares.	Other personalty.	Total.	Poll tax.	REMARKS.

[C. L. 1582.]

LANDS PLATTED.

2243. Owner to plat and number lots. [Ch. 154, '95.] § 1. When any owner of a government subdivision or a platted tract or lot of land shall divide the same in parcels for the purpose of transfer, that cannot be described except by metes and bounds, they shall cause the parcels of land so divided to be platted into lots and have the lots numbered and a plat thereof recorded before any instrument of transfer of such divided parcels of land shall be admitted to registry.

2244. County auditor may request that lands be platted. [Ch. 154, '95.] § 2. In all cases where any government subdivision, tract, or lot of land has been divided into parcels that cannot be described except by metes and bounds, it shall be the duty of the owners of such divided parcels of land upon the request of the county auditor, to cause the same to be platted into lots and to have the lots numbered and the plat recorded. If such plat cannot be made without an actual survey of the land, then they shall have the same surveyed and a plat thereof recorded.

2245. Duty of auditor in case of refusal of owners to plat lands. [Ch. 154, '95.] § 3. If the owners of any parcel or lot of land that has been divided, as set forth in section two of this act, shall refuse or neglect to cause such plat and survey to be made and recorded within thirty days after the request of said auditor, as set forth in said section two, the auditor shall make out such plat from the records of the register of deeds, and the said auditor shall have the same recorded. Such plat being duly certified and recorded, the description of the property in accordance with the numbers and description set forth in such plat shall be deemed a good and valid description of the lots or parcels of land so described.

2246. Costs, how paid. [Ch. 154, '95.] § 4. When the owners of such divided parcels of land fail to comply with the provisions set forth in the second section of this act, the costs of platting and recording shall be paid by the county upon allowance by the county commissioners, and the amount thereof shall be added to the tax upon such tract, or lot, of land the next ensuing year, which tax, when collected, shall be credited to the county general fund.

2247. Township treasurer pay over, when. [Ch. 28, '97.] § 105. Within one week after the time specified in his warrant, each township and city treasurer shall pay to the county treasurer all state and county taxes and county school taxes collected, and to the township or district school treasurer all township or district school taxes collected.

2248. Unable to collect — statement. [Ch. 28, '97.] § 106. If the township or city treasurer shall be unable to collect any of the taxes on his list assessed on real property, he shall make a statement of the same with a full and perfect description of such property, with the taxes on each parcel thereof, which statement shall be verified by the affidavit of such treasurer, that such taxes remain unpaid, and that he has not, upon diligent inquiry, been able to discover any goods or chattels liable to pay such sums, whereupon he could levy the same. Each township or city treasurer shall also make a statement showing the taxes upon personal property remaining unpaid, and the names of the persons against whom assessed and the amount against each; and in such statement shall set forth the amount of all moneys collected by him on account of taxes, which statement shall be verified by the affidavit of such treasurer, in which he shall state in substance that the sums mentioned in such statement as uncollected remain unpaid; that he has not, upon diligent inquiry, been able to discover any goods or chattels belonging to the persons liable to pay such sums whereon he could levy the same; and that the amount of moneys collected by him upon such tax list is truly stated therein.

2249. Treasurer's duty — compare statement. [Ch. 28, '97.] § 107. The county treasurer shall immediately compare such statements with the list, and if he finds the same to be correct, he shall add to each of them a certificate showing that he has examined and compared such statements with the tax list and found them correct, and shall file such statements in his office.

2250. Duplicate receipts to city and township treasurer. [Ch. 28, '97.] § 108. The county treasurer shall give to the township or city treasurer duplicate receipts, stating the amount of moneys paid to him by such treasurer, for which the township or city shall receive a credit on the books of the county treasurer, and he shall also give such township or city treasurer a statement of the amount of delinquent taxes returned, and the amount of any unpaid taxes on personal property, which receipt and statement shall be the vouchers of such township or city treasurer for the amounts specified therein. And the township or district school treasurer shall give to said township or city treasurer duplicate receipts stating the amount of township or district school moneys paid to him by such township or city treasurer. The township or city treasurer shall file one of each such duplicate receipts and statements with the county auditor, and such auditor shall thereupon indorse the fact of such settlement, and the amounts of such receipts and statements on the bond of such township or city treasurer, which indorsement shall operate as a discharge of such treasurer and his sureties from the obligation thereof, unless the return of such treasurer is incorrect, in which case such bond shall continue in force, and such treasurer and his sureties shall be liable thereon for the damage incurred by such incorrect returns. Such county auditor shall at the same time countersign the other receipt and statement and return the same to the township or city treasurer.

2251. Treasurer receive taxes. [Ch. 28, '97.] § 109. After the return of the tax list by any township or city treasurer with the certificate and statement as hereinbefore provided, the county treasurer shall have full power and authority to receive payment of any tax or taxes contained in said list and returned as unpaid, and he is authorized and empowered to take any measures provided by law, to enforce payment or collection of any such unpaid tax or taxes.

2252. Statement of inability to collect. [Ch. 28, '97.] § 110. If the county treasurer is unable, for want of goods or chattels whereon to levy, to collect by distress or otherwise, the taxes or any part thereof, which may have been assessed on the personal property of any person or corporation, or any executor, administrator, guardian, receiver, agent or factor, contained in the tax list delivered to such treasurer for collec-

tion, such treasurer shall file with the county auditor, on the first Monday of September following, a list of such taxes, with an affidavit of himself, or deputy treasurer intrusted with the collection of such taxes, stating that he has made diligent search and inquiry for goods and chattels wherewith to make such taxes, and was unable to make or collect the same. He shall also at the same time make and file with such auditor a certified statement, taken from the returns and statements filed with him by the township and city treasurers, of all taxes assessed on personal property, which have been returned by such township and city treasurers as unpaid, and such other facts as he shall deem of importance to the county commissioners. The county auditor shall present such list and statement to the county commissioners at their first meeting then or thereafter in session, and if they are satisfied such taxes or any part thereof cannot be collected, then they shall instruct the county treasurer to place the same on a list of taxes that cannot be collected in a book provided for that purpose, and said treasurer shall thereupon be released from further liability for a failure to collect such tax or taxes; but if said board are satisfied that said taxes or any part thereof can be collected, they shall order the county treasurer to again proceed to collect the same, and it shall be his duty to again proceed to collect such taxes in the manner provided by law.

2253. Penalty for failure or neglect to collect. [Ch. 28, '97.]

§ 111. If any treasurer shall neglect or refuse to collect any tax assessed on personal property, with the collection of which he is charged, when the same is collectible, or to file the delinquent list and affidavit as herein provided and required, he shall be held liable upon his official bonds for the whole amount of such taxes uncollected; and in the case of a county treasurer, he shall also be held liable in his next settlement with the board of county commissioners, and the same shall be deducted from his salary or fees and applied to the several sums for which they were levied.

2254. Fees for demanding and selling. [Ch. 28, '97.] § 112. County treasurers shall be allowed for making demand for such taxes, where no levy is made on property, five cents per mile for each mile necessarily and actually traveled, and when levy is made, for each and every levy he or his deputy shall make on personal property for the satisfaction of a tax or taxes, he shall receive a fee of one dollar and ten cents for every mile necessarily and actually traveled by him, to be collected out of the property levied on by him, and for the sale of personal property so levied on by him he shall receive a fee of one dollar to be collected with the charges for keeping, out of the property so levied upon, any and all of the fees provided for in this section not

made out of the sale of property, shall be paid to the treasurer or his deputy by the person or corporation from whom such tax is due; provided, however, that the fees herein provided for shall not be accounted for by the county treasurer to the county, nor shall he be compelled to pay the same into the special salary fund of the county, any law to the contrary notwithstanding.

2255. Fees for distraint. [Ch. 28, '97.] § 113. Whenever any township or city treasurer shall make a levy on personal property for the collection of a tax or taxes, he shall be entitled to receive the same fees for levy and sale and charges for keeping and mileage as is allowed to county treasurers for the same services.

2256. Local taxes to be added. [Ch. 28, '97.] § 114. Whenever in the collection of any district, town, city or local taxes 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 first day of July of each year and the county treasurer shall receive the delinquent list and advertise the same at the same time he advertise the sale of real estate for delinquent taxes as by this act provided, by adding the amount of such delinquent district, town, city or local tax to the amount of delinquent state, 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.

2257. Notice of sale for taxes. [Ch. 28, '97.] § 115. 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 October preceding the sale, in a newspaper in his county, if there be one; and if there be no newspaper published in his county he shall give notice by written or printed notice, posted at the door of the court house or building in which 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 or years 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, both real and personal, due; provided, that when any real property not exceeding ten dollars in assessed value, shall have been advertised in a newspaper for two successive years under the provisions of this section and not sold, the treasurer shall give notice for the sale of said property by posting a written notice in the manner provided when there is no newspaper published in

the county, and the same shall not be advertised in a newspaper. The county treasurer shall charge and collect in addition to the taxes and interest and penalty the sum of ten cents on each tract of real property and on each town lot advertised for sale, which sum shall be paid into the county treasury and the county shall pay the costs of publication, but in no case shall the county be liable for more than the amount charged to the delinquent lands for advertising.

Compensation for publishing notice of delinquent tax sale governed by act of 1887, and not by what the treasurer charged. *Gossage v. Pennington County*, 6 S. D. 105; 50 N. W. Rep. 618.

2258. When lands offered for sale. [Ch. 28, '97.] § 116. On the first Monday of November 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 at the place of holding courts in this county, or at the treasurer's office where by law the taxes are made payable, all lands, town lots or other real property which shall be liable for taxes of any description for the preceding year or years, and which shall remain due and unpaid, and he may adjourn the sale from day to day until all the lands, lots or other real property have been offered, and no taxable property shall be exempt from levy and sale for taxes.

2259. Method of sale. [Ch. 28, '97.] § 117. Before making said sale of lands and town lots on which taxes have not been paid, the treasurer shall proceed to offer each separate tract for sale in the numerical order in which they appear on the tax list, receive bids thereupon and in case any person, persons or corporations shall bid the full amount of the taxes, penalty, interest and costs due on such land or town lots, stating in the bid the lowest rate of interest per annum at which the bidder will pay the taxes assessed and due against the lands and lots, then such treasurer shall sell to the person, persons or corporations so offering the best bid such lands or town lots as aforesaid, and shall issue certificates of sale to such purchaser, but in no case shall the rate of interest exceed the rate named in the bid, and the bid offered on such land or lots at the lowest rate of interest per annum shall be considered the best bid; provided, however, that no higher rate of interest shall be allowed than fifteen (15) per centum per annum and no tract of land nor town lot shall be sold under these provisions for less than the entire tract or lot.

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 line 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 southeast 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 shall not be sold for any taxes due from the owner thereof until all other land, town lots or other real property shall have been first sold; and to that end the quantity of land offered for sale may be obtained by drawing the division line in any direction 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' lien 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 therefrom the homestead. [C. L. 1622.]

2260. Bidders failing to pay — what. [Ch. 28, '97.] § 118. Should any person so bidding fail to pay the amount due, the treasurer may again offer land or town lots 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.

2261. Returns of sale. [Ch. 28, '97.] § 119. On or before the first Monday of December following the sale of real property, the treasurer is required to file in the office of the auditor 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. The description of the real estate in such returns shall be entered in the same numerical order as required in the tax list.

2262. Certificate given purchaser. [Ch. 28, '97.] § 120. The purchaser of any tract of land sold by the county treasurer for taxes will be entitled to a certificate, describing the land so purchased, the sum paid, and stating the time when the purchaser will be entitled to a deed, which certificate shall be assignable, and said certificate shall be signed by the treasurer in his official capacity. Any assignment of such certificate must be acknowledged before some officer having power to take acknowledgments of deeds, 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 the 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 certificates the same as in other cases, and shall write thereon, "sold for tax at public sale."

Tax-sale certificate is a contract between purchaser and the state, and its terms cannot be altered by an act of the legislature. *State ex rel. Waldo v. Fylpaa, Co. Treas.*, 3 S. D. 586; 54 N. W. Rep. 599.

2263. Fee for certificates and deed. [Ch. 28, '97.] § 121. The treasurer is authorized to demand and collect fifty cents for each certificate and one dollar for each deed made by him on such sale and the fee for the notary public or other officer acknowledging the deed or certificate, but any number of parcels of land may be, if bought by one person, 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 make an entry thereof in the sale book opposite the description of the land covered.

2264. Private sale allowed, when. [Ch. 28, '97.] § 122. After the tax sale shall have closed, and after the treasurer has made his return thereto to the county auditor, if any real estate remains unsold for want of bidders therefor, the said treasurer is authorized and required to sell the same at private sale at his office to any person who will pay the amount of taxes, penalty and costs thereon for the same, and to deliver to purchaser a certificate as provided in section one hundred and twenty, 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 auditor 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.

2265. Erroneous sales corrected. [Ch. 28, '97.] § 123. 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 at the rate of twelve per centum per annum, from the date of sale, 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. Where, after a tract of land has been listed and assessed, the

entry becomes canceled by the United States government, and a sale thereof for taxes shall have been made by the treasurer by mistake to an innocent purchaser, the county shall repay to such purchaser the amount paid together with twelve per centum interest per annum.

2266. County treasurer may purchase, when. [Ch. 28, '97.] § 124. The county treasurer of each county within this state is hereby authorized at all tax sales hereafter made under the laws of this state, in case there are no other bidders offering the amount due, to bid off all or any real estate offered at said sale for the amount of taxes, penalty, interests and costs due and unpaid thereon, in the name of the county in which the sale takes place, said county acquiring all the rights both legal and equitable that any purchaser could acquire by reason of said purchase.

2267. Certificate of purchase issued to county — no cost paid until redemption. [Ch. 28, '97.] § 125. Whenever the county treasurer of any county shall bid off any real estate in the name of his county, he shall make out a certificate of purchase to said county in the same manner as required if sale had been made to any other person, which certificate shall be retained by the treasurer as provided by law, but no tax receipt shall be issued and no amount due the state or any other fund or costs or treasurer's commission shall be paid by the county until redemption has been made from such sale or the time for redemption has expired or until the interest of the county has been assigned. The certificate or certificates so issued to the county shall bear interest at the rate of twelve (12) per centum per annum.

2268. Redemption by owner from county. [Ch. 28, '97.] § 126. In case the owner of said real estate, or any person having any legal or equitable interest therein, is desirous of redeeming said real estate from said sale to the county, he shall have the right so to do at any time before tax deed shall be issued, by paying the amount of taxes with penalty and interest up to the date of redemption, and the costs of advertising and selling the same, and upon payment thereof the said treasurer is hereby required to give the person so redeeming a certificate of redemption, and he shall at the same time issue a tax receipt and duplicate for said taxes, penalty, interest and costs which shall be entered upon his cash book as other tax receipts. He shall also mark upon the tax duplicate in his office opposite the description of said real estate the word "redeemed" with date and name of person by whom redeemed.

2269. Treasurer may sell certificate. [Ch. 28, '97.] § 127. If any person is desirous of purchasing the interest of said county in said real

estate, acquired by reason of said county treasurer buying the same for the county, he may do so by paying to the said treasurer the amount of the taxes, penalty, interest and costs of sale and transfer up to the date he so pays, and thereupon the said treasurer shall issue a tax receipt and duplicate as provided in the preceding section and shall assign and deliver to said purchaser the certificate of purchase held by said county for said real estate, which assignment and transfer shall convey unto said purchaser all rights of said county, both legal and equitable, in and to said real estate as much so as if he had been the original purchaser at said tax sale.

2270. Treasurer to deed to county. [Ch. 28, '97.] § 128. All pieces or parcels of real property bid in by the county under the provisions of this act and not redeemed or assigned within two years from the date of sale, shall upon the treasurer giving the notice required by law, become the absolute property of the county, and upon payment by said county of the taxes due the various funds upon said sale, the treasurer shall issue a tax deed therefor to the county in the same manner as to individual purchasers, and the county may sell and convey said real estate in such manner as is now or may hereafter be provided by law for selling of real estate, and the proceeds of such sale shall be placed to the credit of the general county fund.

2271. Redemption of lands sold. [Ch. 28, '97.] § 129. 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 date of such sale, or at any time before the execution of a deed of conveyance thereof by the county treasurer, by paying the treasurer for the use of the purchaser, his heirs or assigns, the sum mentioned in the certificate, and interest thereon at the rate at which the land was sold, 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 redeeming the same, and file a duplicate of the same with the county auditor 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 land belonging to them, sold for taxes, within one year after the expiration of such disabilities; and, provided, further, that when the owner or occupant of any land which has been sold for taxes, and who desires to redeem the same, shall not demand a receipt or certificate of redemption from the treasurer, the return of the certificate of purchase for cancellation shall operate as a release of all the claims to the tract or lot

described therein, under or by virtue of the purchase, and the county treasurer upon receiving such certificate of purchase shall mark on the tax sale record opposite the description of the property for which said certificate of purchase has been issued, "sale canceled by return of certificate." No fee shall be charged for services provided for in this section.

Law extending time for redemption cannot be made to apply to sales made prior to the passage of the law. State ex rel. Waldo v. Fylypaa, Co. Treas., 3 S. D. 586; 54 N. W. Rep. 599.

Mortgagee may redeem from tax sale by payment of taxes assessed against realty only where mortgage is a prior lien to personal taxes for which land was sold. Buell v. Baylan, 10 S. D. 180; 72 N. W. Rep. 406.

2272. County treasurer gives notice of redemption. [Ch. 128, '90.]

§ 1. As soon as redemptions from tax sales of any kind are made it shall be the duty of the county treasurer of the proper county to notify the purchaser, or present holder of the redeemed tax certificate, by mail, of such redemption, giving description of property and amount of redemption, for which services the county treasurer shall be entitled to deduct from the redemption money the sum of ten cents for each notice.

2273. Tax deed — executed by county treasurer — form. [Ch. 31, '97.] Said deed shall be executed by the county treasurer, under his hand, and the execution thereof shall be atested 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 of the regularity of all proceedings from the valuation of the land by the assessor up to the execution of the deed, and such deed shall be substantially in the following or other equivalent form:

Whereas, A. B. did, on the day of, A. D. 18.., produce to the undersigned, C. D., treasurer of the county of in the state of South 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 the 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 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 state of South Dakota, by C. D., 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 the 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; provided, however, that in case the lands are sold at private sale, there shall be inserted in said deed, in place of the words, "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," the following: "Did in the . . . day of , 18. . . , purchase at private sale, at the office of the county treasurer in said county, the tract, parcel or lot of land lastly in this indenture described, which had been offered at public sale for taxes but not sold for want of bidders."

2274. Undivided lands. [Ch. 28, '97.] § 130. Any person claiming a part of any land sold for taxes, whether the part be divided or undivided, may redeem the same on paying the purchase money on such portion or proportion as he shall claim, together with the interest and subsequent taxes, and a statement of the portion redeemed shall be indorsed on the receipt or certificate of redemption and entered up in the treasurer's tax sale record.

Owner of two lots sold together for taxes has the right to redeem one without payment of taxes on the other. *Rochford v. Fleming*, S. D. ; 71 N. W. Rep. 317.

Failure of proper officer to attach his signature and affix his seal to oath of assessor at the time the assessment-roll is filed, is mere irregularity, and does not affect validity of the tax. *Avant et al. v. Flynn, Treasurer*, 2 S. D. 153; 49 N. W. Rep. 15.

Deed which recites on its face that the sale was made at a time at which it could not be legally made, and that two separate lots were sold as one parcel is void. *Salmer v. Lathrop*, S. D. ; 72 N. W. Rep. 570.

2275. Partial redemption. [Ch. 28, '97.] § 131. In every case of partial redemption, pursuant to the last section, the quantity sold shall be redeemed in proportion to the amount paid on such partial redemption, and the county treasurer shall convey accordingly.

2276. Holder of tax certificate must give notice before deed issues — deeds. [Ch. 28, '97.] § 132. If no person shall redeem lands sold for taxes within two years from the date of sale, at the end of said two years the lawful holder of the certificate of purchase shall cause a no-

tice to be served upon the owner of the land so sold, or upon the person in possession of such land or town lot unredeemed and also upon the person in whose name the land is taxed, if such person reside in the county where the property is situated, in the manner provided by law for the service of summons signed by him, his agent or attorney, stating the date of sale, the description of the property sold, the name of the purchaser and assignee, if any, and that the right of redemption will expire and a deed for said land or lot be made within sixty days from the completed service thereof. Service may be made upon non-residents of the county by publishing the same three times in some newspaper printed in said county, and if no newspaper is printed in said county then and in that case in the nearest newspaper published in the state. Any non-resident of the state may file with the county auditor a written appointment of some resident of the county where the lands or lots are situated as agent upon whom service shall be made, and in such case personal service of said notice shall be made upon said agent. Service shall be deemed complete when an affidavit of the service of said notice and of the particular mode thereof duly signed and verified by the holder of the certificate of purchase, his agent or attorney, shall have been filed with treasurer authorized to execute the tax deed. Such affidavit shall be filed by said treasurer and entered upon the records of his office and said record or affidavit shall be presumptive evidence of the completed service of notice herein required and until sixty days after the service of said notice the right of redemption from such sale shall not expire. The cost of serving said notice, whether by publication or otherwise, together with the cost of the affidavit, shall be added to the redemption money, provided the treasurer shall have received notice that service had been begun or made and a statement of the said costs filed in his office. Immediately after the expiration of sixty days from the date of completed service of the notice hereinbefore provided, the treasurer then in office shall make out a deed for each lot or parcel of land sold and remaining unredeemed, said deed shall be countersigned by the county auditor with the seal attached and shall be delivered to the purchaser or his assignee upon the return of the certificate of purchase. The treasurer shall receive one dollar for each deed made by him on such sales, but any number of parcels of land bought by one person may be included in one deed as the holder may desire. Said deed shall vest in the grantee an absolute estate in fee simple in such land, subject, however, to all claims which the state may have therein for taxes or liens or incumbrances; provided, that the person demanding said tax deed shall purchase the assignment of all prior tax certificates held by the county on said land before the county treasurer shall issue the tax deed.

2277. Limitation of action to recover. [Ch. 28, '97.] § 133. No action shall be commenced by the former owner or owners of lands, or by any person claiming under him or them, to recover possession of land which has been sold and conveyed by deed for non-payment of taxes, or to avoid such deed, unless such action shall be commenced within three years after the recording of such deed, and not until all taxes, interest and penalties, costs and expenses shall be paid or tendered by the parties commencing such action.

Statute of limitations does not run on void deed. *Salmer v. Lathrop*, 10 S. D. 216; 72 N. W. Rep. 570.

2278. Tax sale not voidable. [Ch. 28, '97.] § 134. The sale of lands, town or city lots or any other real property shall not be invalid on account of such real property having been listed or charged on the duplicate in any other name than that of the rightful owner; nor shall any such sale be invalid nor the conveyance for the real property so sold be voidable by reason of the neglect or failure of the treasurer, or any other officer to collect the tax for which it was sold, by distraint and sale of personal property.

2279. Certificate delivered for deed. [Ch. 28, '97.] § 135. When deeds are delivered by the county treasurer for real property sold for taxes, the certificate therefor must be canceled and filed away by the county auditor, and in case of loss of any certificate, on being satisfied thereof by due proof, and bond being given to the state of South 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 auditor.

2280. Lands becoming taxable. [Ch. 28, '97.] § 136. A list of lands becoming taxable for the first time, and a list of lands the entry of which has been canceled by the commissioner of the general land office during the preceding year in any county of this state, shall be procured by the state auditor from the proper land offices, at the best prices for the state, and copies of such lists shall be forwarded by the state auditor to the auditor of each county on or before the fifteenth day of April of each year.

Where first proof on government land is rejected, and new proof made, land does not become taxable until after second proof. *Duncan v. Newcomer*, 9 S. D. 375; 69 N. W. Rep. 580.

2281. Transient and bankrupt stocks. [Ch. 28, '97.] § 137. All itinerant, transient, or bankrupt stock, merchants or salesmen who vend goods within this state, at any time after the annual assessment is made shall be assessed and returned by the assessor of the town or city wherein

he or they shall open or offer for sale any stock of goods, groceries or merchandise, by exhibiting the same, at the same rate as other merchants have been assessed, and such assessor shall forthwith return the same to the county treasurer to be extended upon the tax list by him.

2282. Transient tax, how collected. [Ch. 28, '97.] § 138. Whenever such assessment is returned to the county treasurer, it shall be his duty to issue a warrant forthwith to the constable of the town, wherein such itinerant or transient sales are being effected, commanding him to collect such tax forthwith.

2283. Constable to levy and sell if payment refused. [Ch. 28, '97.] § 139. It shall be the duty of such constable to proceed forthwith according to the exigencies of his warrant and demand the amount of taxes so levied, from the person or persons conducting such sale, and if not paid, to levy the same upon any goods, wares and merchandise as shall be found in the possession of such salesman or salesmen, and sell the same after ten days' notice given in the nearest newspaper and make return thereof, deducting his legal fees and returning the surplus, if any, after paying costs and taxes, to the owner, or reputed owner or agent in possession.

2284. Debts of municipalities void if entailing taxation beyond the rates fixed by law. [Ch. 28, '97.] § 140. It shall be unlawful for the corporate authorities of any county, township, city, town or village or the authorities of any school district, unless specially and expressly authorized by law, to contract any debt or incur any pecuniary liability, for the payment of either the principal or interest, for which, during the current year or any subsequent year, it shall be necessary to levy on the taxable property of such county, township, city, town or village or school district, a higher rate of tax than the maximum rate prescribed by law; and every contract made in contravention of the provisions of this section shall be utterly null and void in regard to any obligation thereby imposed on the corporation on behalf of which such contract purports to be made, but every commissioner, officer, agent, supervisor or member of any municipal corporation that makes or participates in making or authorizes the making of any such contract, shall be held individually liable for its performance, and every commissioner, supervisor, director or member of any city, town or village council or other officer or agent of any such municipal corporation present when any such unlawful contract was made or authorized to be made, shall be deemed to have made or to have participated in making, or to have authorized the making of the same, as the case may be, unless, if present, he dissented therefrom, and entered or caused to be entered such dissent on the records of such municipal corporation or its council, supervisors or other office.

2285. Neglect of duty by officers. [Ch. 28, '97.] § 141. Every county auditor and every district or township assessor who in any case refuses or knowingly neglects to perform any duty enjoined on him by this act; or who consents to or connives at any evasion of its provisions whereby any proceeding required by this act is prevented or hindered, or whereby any property required to be listed for taxation is unlawfully exempted, or the valuation thereof is entered on the tax list at less than its true value, shall for every such neglect, refusal, consent or connivance, forfeit and pay to the state not less than two hundred (200) dollars nor more than one thousand (1,000) dollars at the discretion of the court, to be recovered before any court of competent jurisdiction.

2286. Township treasurers to be collectors of taxes — question submitted. [Ch. 28, '97.] § 142. At the first general election to be held in this state after the passage of this act, there shall be submitted to a vote of the qualified electors of each county, the question: "Shall the township and city treasurers be collectors of taxes as provided in section seven (7), chapter eighteen (18) of the session laws of eighteen hundred and ninety-three?" And the county auditor of each county shall submit such question in the manner provided by law. The vote on the said question shall be canvassed, certified and returned in the same manner as the vote for the county officers.

2287. Petition of voters. [Ch. 28, '97.] § 143. Whenever one-fourth of the legal voters of any county shall, not less than twenty nor more than sixty days before a general election, file with the county auditor a petition signed by them with the place of residence of each signer added to his signature, asking that the question set forth in section one hundred and forty-two, be submitted to the qualified electors of such county at such election, such county auditor shall submit such question at such election in the manner provided by law.

2288. Applicable, when. [Ch. 28, '97.] § 144. If a majority of the electors at any such election shall have voted in favor of such proposition, then all the provisions of this act shall apply to and be in force in such county. But if a majority of such electors shall have voted against such proposition then the provisions of this act shall not apply to such county.

2289. Act construed. [Ch. 28, '97.] § 145. This act shall be construed to antedate all other acts of the fifth legislative assembly of the state of South Dakota, and the levy and collection of all taxes under acts of the legislature of the state of South Dakota, identical in provisions with this act, in accordance with such provisions and the collection of uncollected taxes, are hereby legalized.

ASSESSMENT OF LIVE STOCK.

2290. Where and when assessed. [Ch. 33, '97.] § 1. All live stock may be assessed at any time in the county in which they are found ranging during the months of June, July, August, September, October and November of each year, providing that such live stock have not already been assessed in another state, or in another organized county in this state the same year.

2291. By whom assessed. [Ch. 33, '97.] § 2. In case the assessor fails or neglects to assess such live stock, then the county treasurer, on the information of any citizen of such county, shall at once proceed to assess said live stock, notifying the owner or owners thereof of his action, and giving the valuation set upon the same, providing that such information to the treasurer shall be in writing, giving the approximate number of head of live stock, the name or names of the owner or owners, the range upon which said live stock are grazing, and the name of the person filing the information.

2291a. Transient herds of live stock. [Ch. 44, '99.] § 1. That if any person having live stock in any county of this state upon which taxes are unpaid, shall, in the opinion of the county treasurer be about to remove such stock from the county, it shall be the duty of such treasurer to collect such taxes at any time after the tax levy has been made, and if in the opinion of the treasurer such collection should be made before the tax duplicate has been placed in his hands, he shall demand and receive from the county auditor a certificate of the amount of the taxes assessed against such live stock, and such certificate shall be his sufficient authority for the collection of such tax.

LEVY AND LIMITATION OF TAXES.

2294. Per cent — how determined. [Ch. 41, '99.] § 1. All county, township, city, town and school taxes, except special taxes for local improvements in cities, and cities incorporated under special charters, shall be levied or voted in specific amounts, and the rate per centum shall be determined from the total valuation of property as equalized by the state board of equalization each year. The rate per centum of all taxes, except the state tax, shall be calculated and fixed by the county auditor in mills and tenths of mills, according to the limitations hereinafter prescribed, provided, that if any county, city, town, township, school district or school township shall return a greater amount than the prescribed rate will raise, then the county auditor shall extend only such amount of tax as the limited rate will produce.

2295. State taxes. [Ch. 41, '99.] § 2. The state tax shall be levied by the state board of equalization, and the rate of such tax shall be certified by the state auditor to the county auditor on or before the fourth Monday of August in each year, and for ordinary state purposes shall not exceed two mills on the dollar in any one year.

2296. County taxes. [Ch. 41, '99.] § 3. On the first Tuesday in September of each year the board of county commissioners must meet at the county seat to levy the necessary taxes for the current fiscal year, and they may levy the taxes at any time after the said first Tuesday in September, if the statement from the state board of assessment and equalization has not been received; but such levy must not be postponed for more than ten days, and they shall levy the taxes as hereinafter directed. Such taxes shall be based upon an itemized statement of the county expenses for the ensuing year, which statement shall be included in the published proceedings of said board; and no greater levy of county tax shall be made upon the taxable property of any county than will be equal to the amount of such expenses, with an excess of five per cent of the same. The board of county commissioners shall have power to make the following levies:

1. For general county purposes including the support of the poor, such an amount as will necessitate a rate per centum not greater than six mills.

2. For insane purposes, such an amount as may be due the state for the support of the insane from their county.

3. For county roads, such an amount as will necessitate a rate per centum not greater than two mills. Provided, that the county road tax shall not be extended against property included within the limits of any organized township, or of any organized city or town.

4. For county bridges, such an amount as will necessitate a rate per centum not greater than two mills, except in counties where only a part of its territory is organized into civil townships, the county commissioners shall levy one mill only on organized townships.

5. For county sinking fund, such an amount as will pay one year's interest on the bonded indebtedness of the county, with not to exceed fifteen per cent of the principal. The money from the sinking fund tax shall be applied to no other purpose than the payment of outstanding bonds and interest on the same until such bonds and interest are fully paid, when any surplus remaining shall be transferred to the general county fund. Provided, that the total county tax rate shall not exceed in any one year the sum of eight mills on the dollar for all purposes.

6. The county commissioners of each county also may levy a tax of one dollar on each elector in the county for the support of the common schools, and no property shall be exempt from the collection of such tax by distress or otherwise, which taxes when so collected shall be distributed to the several school corporations in the county in proportion to the number of children resident in the territory of each, from six to twenty years of age inclusive.

7. In all counties not wholly organized into civil townships the county commissioners shall levy on each male person living in an unorganized township, and outside the boundaries of any organized city or town in said county, and being above twenty-one years of age, and under the age of fifty, excepting paupers, idiots, lunatics and

such others as may be exempted by law, a road poll tax of one dollar and fifty cents, which must be paid in money or by one day's labor in each year, on the public highways within his road district at the time and place directed by the road overseer, and if not worked out or paid on demand, then no property shall be exempt to make the collection of such tax by distress or otherwise. Provided, that the county commissioners shall have power to levy taxes against the property of such unorganized townships for fire guards as now provided by law.

8. The county commissioners of each county shall cause to be charged upon the tax list against the names of each person returned by the assessors as the owner or keeper of a dog or dogs, as a tax the sum of one dollar for each dog owned or kept by such person, which tax when collected shall be credited to the school fund and return the same to the school district from which it was collected.

2297. Township taxes. [Ch. 46, '99.] § 4. 1. The electors of each township shall have power at their annual town meetings on the first Tuesday in March in each year, to vote to raise such sums of money for repairing and constructing bridges, and for necessary town charges as they may deem expedient, not exceeding an amount which will necessitate a total levy greater than five mills, and for fire guards not exceeding an amount which will necessitate a total levy greater than five mills, and for fire guards not exceeding an amount which will necessitate a total levy greater than five mills. They shall also vote the amount necessary for highway labor, and road tax.

2. The township board of supervisors must meet on the last Tuesday of March in each year and must levy the highway labor and road tax for the ensuing year, and perform all the duties required of them in sections 1271 and 1272, Compiled Laws of 1887. Said road tax shall not exceed fifty cents on each one hundred dollars valuation, and shall be levied on the equalized assessment of the preceding year.

3. The township board on the last Tuesday in March in each year also shall make the levy for town purposes for the ensuing year. Provided, that no tax for town purposes or for highway labor and road purposes shall exceed the amount voted to be raised for each at the annual town meeting.

4. In every township where there are bonds outstanding, the township board of supervisors at their last meeting in March in each year, are authorized to levy a tax sufficient to pay the interest on said bonds, and not to exceed fifteen per cent of the principal of said debt as a sinking fund. Provided, that the total township tax rate shall not exceed in any one year the sum of ten mills on the dollar for all purposes.

It shall be the duty of the township clerk immediately after the township board of supervisors have made the levy of taxes to notify the county auditor of the county in which the township is situated, of the amount levied after the following form viz:

For general purposes	dollars
For bridge purposes	dollars
For fire guard purposes	dollars
For interest fund	dollars
For sinking fund	dollars

The county auditor shall calculate the rate and enter the same on the county tax list to be collected as county taxes are collected.

5. The township board of supervisors at their meeting the last Tuesday in March of each year, shall assess on every male inhabitant being above twenty-one years of age, and under the age of fifty, excepting paupers, idiots, lunatics and such other persons as may be exempt by law, as a road poll tax, one day's labor in each year, on the public highways within his road district, at the time and place directed by the road overseer, and no property shall be exempt from the collection of such tax by distress or otherwise.

2298. School taxes. [Ch. 41, '99.] § 5. 1. In every district having but one school, a majority of the qualified electors thereof shall, at any regularly called school meeting, have authority to instruct the district school board concerning the levy of taxes for the maintenance of the same. Said taxes shall be levied at the annual school meeting and shall be certified by the school clerk to the county auditor of the county in which the district is situated immediately thereafter.

2. The school board of a school township shall have power to levy upon all the property subject to taxation in the township, a tax for school purposes of all kinds authorized by law. Such tax shall be levied by resolution of the board prior to the fifteenth day of August in each year and no tax shall be levied except by an affirmative vote of a majority of the members of the board, and a resolution to levy a tax and the vote thereon shall be entered in the record of the proceedings of the board. The clerk shall immediately thereafter, certify to the county auditor of the county in which the school township is situated, the amount of tax so levied.

3. The board of education of any town or city, shall on or before the fifteenth day of August in each year, levy a tax for the support of the schools of the corporation for the fiscal year next ensuing on all property subject to taxation in the district, which levy the clerk of the board of education shall immediately thereafter certify to the county auditor of the county in which said town or city is situated.

4. In any school township, school district, or city or town independent school district, where there are bonds outstanding the school board shall have power, at the time the school taxes are levied, to levy a tax to pay the interest on said outstanding bonds as the same may become due, and not to exceed fifteen per cent on the principal as a sinking fund. Said tax shall be certified to the county auditor by the school clerk at the same time that the levies for other purposes are certified. The money obtained from the levies for the interest and sinking fund shall not be used for any other purpose than that for which the levies are made.

5. Whenever there shall be any bonded indebtedness outstanding against a school township, which township shall be subdivided into school districts by action of the county commissioners, the said commissioners shall levy a tax annually on the property of the new districts formed therefrom sufficient to pay the interest and principal of the bonds as the same become due.

6. All school levies of every nature shall be made in specific amounts, and shall be made in the following form viz:

For tuition fund	dollars
For general fund	dollars
For interest fund	dollars
For sinking fund	dollars

The rate per centum of all school taxes shall be calculated and fixed by the county auditor, who shall consolidate the amounts and extend the school tax in one column. Provided, that the total annual school tax rate shall not exceed in any one year the sum of twenty mills for all purposes.

2299. City and town taxes. [Ch. 41, '99.] § 6. 1. The city council in all cities organized under the general laws of the state or under special laws unless otherwise provided for in their charters the provisions of such charters are not modified by this act, shall, at their first regular meeting in September in each year, or within ten days thereafter, levy a tax for general purposes sufficient to meet the current expenses of the year, based upon estimates furnished by the city auditor or a committee from the city council which estimate shall be entered upon the regular minutes of said council, and such levy for general purposes shall not exceed an amount that will necessitate a greater rate per centum than twenty mills. In addition thereto may be levied a sum sufficient annually to meet the principal of said bonds as they mature. Said tax levies shall, immediately after they are made be certified by the city auditor to the county auditor of the county in which such city is situated.

2. Incorporated towns organized under the general laws of this state, or under special laws, unless otherwise specially provided for in their charter, the board of trustees shall, before the third Tuesday in May in each year, levy the amount of the general town tax for the current year, and for any debt created under section 1046 Compiled Laws of 1887, the board of trustees, at the time the general town tax is levied, shall levy an additional tax each year sufficient to

pay the annual interest with an addition of not less than five cents nor more than fifty cents on each hundred dollars of valuation to create a sinking fund for the liquidation thereof. Such tax shall be used for no other purpose than the payment of the debts and the interest thereon. Immediately after the levy of the taxes as herein set forth, the town clerk shall certify to the county auditor of the county in which such town is situated, the amounts of such levy in the following form, viz:

For general fund dollars.
 For interest fund dollars.
 For sinking fund dollars.

3. The county auditor shall calculate and fix the rate per centum of all city and town taxes and shall enter the same on the tax lists for collection as other taxes are collected, consolidating the several levies of city tax or of town tax in one column. Provided, that the general fund tax rate for incorporated towns and villages shall not in any one year exceed the sum of five mills on the dollar for all purposes.

2299a. Repeal. [Ch. 41, '99.] § 7. All acts and parts of acts, excepting those relating to the taxation of sleeping car, express, telegraph, or telephone companies, and to special assessments in cities or towns or unless otherwise especially provided for in the charters of cities or towns, authorizing the levy of any tax whatever otherwise or further, than as hereinbefore provided, are hereby repealed.

2292. Commence assessing, when. [Ch. 23, '91.] § 1. The assessor shall in no case commence assessing before the first day of April of each year.

2293. Duty of assessor. [Ch. 78, sub. ch. 8, '93.] § 10. Every township or county assessor shall, on or before the first day of July in each year, furnish to the clerk of each school corporation, the property of which he assesses, a certificate of the valuation of all real property and all personal property and of the total of these subject to taxation within the corporation for the current year.

2300. Personal property tax a lien upon personalty. [Ch. 31, '97.] § 1. That all taxes assessed upon personal property within this state

shall be a first lien on all personal property of the person against whom personal taxes are assessed, from and after December first in each year.

2301. Collections. [Ch. 31, '97.] § 2. That the collection of taxes on all personal property shall be made as heretofore provided by law.

2302. Property of deceased persons. [Ch. 35, '97.] § 1. It shall be the duty of assessors to hereafter assess the property of the estates of deceased persons in the county, township or city where the property, either real or personal, shall be located at the time such assessment is made, and any part or portion of the estates of deceased persons is hereby made assessable in the county, township or municipality where such property or any portion of it may be at the time of its assessment.

2303. Compromise of taxes. [Ch. 34, '97.] § 1. Whenever it appears to the board of county commissioners that the full amounts of any taxes extended and charged against any platted real property in any township, town, city or village cannot be realized by sale of the property or otherwise, the said board shall have power to make such settlement or compromise of any taxes for any year or years as in their judgment shall be for the best interests of the county; and in such settlement or compromise the taxes abated shall be apportioned pro rata among the several funds represented therein.

2304. Commissioners may compromise. [Ch. 118, '89.] Whenever taxes remain unpaid on any town lots or other real estate, and the property shall have been offered for sale as required by the statutes two successive years and received no purchaser on account of the depreciation of the value of said property or otherwise, the county commissioners of the county in which the property is situated, shall have the power to compromise with the owners thereof, by abating a portion of the delinquent taxes and penalty on said property.

2305. County commissioners may levy tax, when. See § 2299a.

HIGHWAYS AND RIGHTS OF WAY.

2307. General provisions. [Ch. 24, '90.] § 1. The several township and county assessors in each county in this state shall hereafter, in

assessing lands for taxation through or over which any railroads or any public highway shall run, deduct from the entire area of such land the amount of land embraced within the limits of the right of way of such railroads, or public highways, and assess to the owner of such land through or over which said right of way or other highway extends only the amount of such land less the amount so deducted; provided, that this section shall not apply to highways running upon section lines.

2308. Annexation provided for. [Ch. 65, '90.] § 1. That for the purpose of the levy and collection of taxes on property situated in certain unorganized counties of this state, such counties are hereby attached to organized counties as follows:

The unorganized counties of Delano, Rinehart, Choteau, Wagner, Martin, Ewing and Harding are attached to Butte county.

The unorganized counties of Scobey, Sterling and Nowlin are attached to Meade county.

The unorganized county of Washington is attached to Custer county.

The unorganized counties of Ziebach and Jackson are attached to Pennington county.

The unorganized county of Stanley is attached to Hughes county.

The unorganized counties of Pratt, Presho and Lyman are attached to Brule county.

The unorganized counties of Gregory and Todd are attached to Charles Mix county.

Above section modified by organization and change of boundaries of counties.

2309. Property listed and taxes collected. [Ch. 15, '91; ch. 65, '90.] § 2. All property subjected to taxation, situated in any of the unorganized counties named herein, shall be listed for taxation by the assessors of the organized counties to which such unorganized counties are attached as provided in section one of this act, and such taxes shall be collected by the treasurers of such organized counties. The assessors shall make returns of assessments made in unorganized counties at the same time and in the same manner as now provided by law for organized counties; provided, that no assessment shall be made or taxes collected in such unorganized counties for other than state and judicial purposes.

County tax levied on property in unorganized county for use of organized county is void. Farris v. Vannier, 6 Dak. 186; 42 N. W. Rep. 81.
Territorial tax so levied is not invalid. Id.

2310. Rate of tax levy established. [Ch. 19, '91.] § 1. That in any city, town or village now existing under a special charter, wherein, under the provisions of said charter, the rate of levy for general municipal purposes is limited to a rate less than ten (10) mills on the dollar of valuation, and wherein the rate of levy for providing a sinking fund to pay bonded indebtedness is limited to a rate less than five (5) mills, that such city, town or village is hereby authorized and empowered to fix the rate of tax levy for the purposes mentioned at amounts not exceeding ten (10) mills on the dollar of valuation for general municipal purposes, and not exceeding five (5) mills on the dollar of valuation for the purpose of providing a sinking fund to pay the same.

2311. City treasurer authorized to bid off real property. [Ch. 20, '91.] § 1. The city treasurer in each city in the state of South Dakota incorporated under the general law, is hereby authorized at all sales of real property hereafter made under the laws of this state for due and unpaid special assessments thereon for local improvements, in case there are no other bidders, to bid off all or any real property offered at such sale, for the amount of the assessment, penalty, interest and costs due and unpaid thereon, in the name of the city in which such sale takes place, such city acquiring all the rights, both legal and equitable, that any other purchaser could acquire by reason of such purchase.

City warrant lawfully drawn upon general fund in one year should be received in payment of city taxes for a subsequent year. *Western Town Lot Co. v. Lane Treas.*, 7 S. D. 599; 65 N. W. Rep. 17.

A finding that when a certain warrant was issued the city had exceeded constitutional limit of indebtedness, does not show that such limit was reached when indebtedness was incurred and, therefore, does not establish its invalidity. *Id.*

Warrants issued by city after constitutional limit is reached, but in anticipation of a tax already levied, are valid to the extent of the levy. *Shannon et al. v. City of Huron*, 9 S. D. 356; 69 N. W. Rep. 598.

Warrants issued for purpose of securing state capital void. *Id.*

City council have no authority to divide fund levied for city purposes, so as to prevent the application of warrants in payment of taxes. *Western Town Lot Co. v. Lane*, 7 S. D. 1; 62 N. W. Rep. 982.

2312. Law regulating sales and purchases by county treasurer to govern. [Ch. 20, '91.] § 2. Such sale to the city, redemption therefrom, issuance of certificate therefor, sale and assignment of the same and payment of moneys arising therefrom shall be subject to the same rules and regulations as are by law provided for sales and purchases by county treasurers at tax sales.

2313. City to protect purchaser. [Ch. 20, '91.] § 3. Whenever a special assessment for a local improvement shall be set aside or declared null and void by a court of competent jurisdiction, the city shall save the purchaser at the sale for said special assessment harmless, by paying him the amount of the principal which he paid upon such sale, together with interest at twelve per centum per annum from the date of sale.

2313a. Municipalities may purchase tax sale certificates — from county, when. [Ch. 48, '99.] § 1. That wherever any county has, or shall bid in at tax sale, any lot, parcel or tract of land, within the incorporate limits of any incorporated city, village or town, and has failed, or shall fail, refuse or neglect to take tax deed for said lot, parcel or tract of land within three years thereafter, it shall be lawful for the council or board of trustees of such city, village or town, to authorize, by resolution, the treasurer of such city, village or town, to demand of the county treasurer, an assignment of such certificate of tax sale, and the county treasurer shall immediately make out and deliver to such city, village or town treasurer, an assignment of such certificates as may be demanded by such city, village or town treasurer on the payment to the county treasurer of the amount of all the original taxes against such lots, parcels or tracts of land, after deducting the amount of the tax belonging to such city, village or town, and exclusive of all penalties, interest or costs whatever.

2313b. Record. [Ch. 48, '99.] § 2. In the resolution authorizing the treasurer of any incorporated city, village or town, to apply for such assignment the council or board of trustees of such city, village or town, shall specify and describe the particular lots, tracts or parcels of land for which said city, village or town treasurer shall demand certificates, and such resolution shall be entered at length upon the clerk's record.

2313c. Duty of treasurer. [Ch. 48, '99.] § 3. It shall be the duty of the treasurer of said city, village or town, to sell and assign such certificates if he can procure therefor a sum equal to the amount paid for the same, and the original amount of the city, village or town taxes, or he may — by resolution of the council, or board of trustees — proceed to take tax deed for said lots, tracts or parcels of

land and sell the same for a sum equal to the amount paid for the certificates, the original amount of the city, village or town tax, and the costs of procuring deed, and give to the purchaser a quit claim deed to be signed by the mayor and auditor, or president of the board of trustees, and clerk — as the case may be — and such city, village or town shall at no time be made a party to any suit at law by reason of such transfer.

2313d. Cost of certificate, how paid. [Ch. 48, '99.] § 4. Any city, village or town, purchasing any tax certificates as herein provided, shall be authorized to pay for the same out of any money in the general fund, and at no time shall any city, village or town have more than five hundred dollars (\$500) exclusive of the city, village or town tax invested in such certificates, and no city, village or town, of less than fifteen hundred inhabitants shall have more than two hundred dollars (\$200) so invested at any one time. Provided, that all money received from the sale of certificates or land as herein provided, shall be turned into the general fund of such city, village or town, except such amounts as belong to other funds of such city, village or town, in the original taxes, against such lot, parcel or tract, which amounts shall be placed in the different funds to which they may belong.

2314. Compensation of assessors — unorganized counties. [Ch. 16, '91; ch. 65, '90.] § 3. Assessors shall receive as compensation for making the assessment in unorganized counties, the sum of four dollars per day for each day necessarily employed in making assessment, which compensation shall be paid by the state treasurer from the taxes collected on such assessment.

ARTICLE 14. COUNTY TREASURER'S DUTIES.

2315. Collector of taxes. The county treasurer of each county shall 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. [C. L. 1597.]

2316. Form of tax receipt. The tax receipt and duplicate shall be substantially in the following form, to wit:

No. TREASURER'S OFFICE, COUNTY, DAKOTA, }
 Received of dollars in full of the following taxes for the year 18..... }
 annexed property or real estate.

Part of sec. or name of town.	Section or lot.	Town or bl'k.	Range or lot.	Acres or bl'k.	KIND OF TAX.	AMOUNT OF TAXES.			Total.
						Paid in cash.	Paid in warrants.	Interest.	
					State. County. Road. Poll. School. Advertising.				

[C. L. 1600.]

DOG TAX.

2317. Assessor's duty. [Ch. 121, '89.] § 1. That each and every assessor in this state, when making the assessment, shall annually make a list of the names of all persons who own or keep a dog or dogs, and set opposite the name of such owner or keeper the number of dogs he or she has in his or her possession, or that is or are kept on his or her premises, which list shall be returned by such assessor to the county clerk or auditor of the county in which said list is taken, with the assessment roll.

2318. Tax of one dollar. See § 2299a.

2319. Court may order reassessment. [Ch. 160, '93.] Whenever any action or proceeding shall be commenced and maintained before any court to prevent or restrain the collection of any tax or part thereof, or any particular act of any officer in the collection thereof, or to recover any such tax before paid, or to recover the possession or title of any property, real or personal, sold for taxes, or to invalidate or cancel any deed or grant thereof for taxes, or to restrain, prevent, recover or delay any payment of taxes, the true and just amount of taxes due upon such property or by such person must be ascertained and judgment must be rendered and given therefor against the taxpayer, and the court may, if in its opinion the assessment or any subsequent proceeding has been rendered void or voidable by the omission or commission of any act required or prohibited, order a reassessment of such property to be made by the proper officer, acting at the time of making of such order and the taking by the proper officers then acting of all such steps subsequent to assessment as shall be necessary to amend such assessment and levy, to the end that the whole matter may be adjudicated in the one action or proceeding and the proper proportion or ratio of tax be paid by the property owner. The costs in such an action or proceeding to be assessed and paid as the court may direct. If the time of the decision by the court be after the date when taxes by general

law become delinquent, execution or proper process must issue forthwith for the collection of the same. [C. L. 1643.]

2320. County treasurer pay over money to state treasurer. [Ch. 141, '90.] The treasurers of the several counties shall pay into the state treasury all funds in their hands belonging thereto on or before the first Monday in the months of January, April, July and October of each year, and at such other times as the state treasurer shall require; and the funds so paid in shall be the identical state warrants, if any, received by the treasurer for the payment of the tax, or in coin, or in treasury notes of the United States; and the said county treasurer shall send said money to the state treasurer by draft, post-office order, or by express, for which he shall be allowed the actual expenses of procuring the same and no more. [C. L. 1644.]

2321. Penalty for taxes past due. [Ch. 163, '93.] § 1. In case any telegraph, express, telephone and sleeping car companies doing business in this state, shall fail or neglect to pay the tax due from it to the state for a period of thirty days after the same shall have become due, there shall be added to such tax a penalty of twelve per centum per annum.

2322. State treasurer shall distrain property to pay taxes. [Ch. 163, '93.] § 2. At any time after the expiration of thirty days from the time any such tax has become due and payable the state treasurer shall distrain sufficient property of the delinquent to pay the same, together with said penalty and the cost of distraint and sale, and shall immediately advertise the sale of the same in at least three newspapers published in the state, stating the time when and place where such property shall be sold, and four weeks' notice of the time and place of such sale shall be given. Such sale shall take place at some point in this state, and the proceeds thereof shall be applied to the payment of such tax, penalty and cost.

2323. Tax now due, how collected. [Ch. 163, '93.] § 3. All taxes now due the state from such companies shall be collected in the manner herein provided.

2324. May rebate penalty and interest. [Ch. 181, '95.] § 1. The board of county commissioners of the several counties of the state of

South Dakota, are hereby empowered, as means of relief, to rebate in whole or in part, the taxes of any person whose buildings, stock on other property has been destroyed by fire, cyclone or other unavoidable casualty; provided, the loss for which said rebate is allowed shall be such only as is not covered by insurance.

2325. County treasurer may refund taxes, when. [Ch. 161, '93.]

§ 1. Whenever real property not liable for taxation shall have been sold for taxes, and the certificate thereof is void, the county treasurer of the county where such sale was made shall refund to the holder and owner of such certificate the amount paid to the county for the same.

Statute providing for repayment of taxes by county to purchaser at tax sale in case the entry be canceled after the land is listed, and assessed, and by mistake sold for taxes, not retroactive unless made so by its terms. *American Inv. Co. v. County of Beadle*, 5 S. D. 410; 69 N. W. Rep. 212; *American Inv. Co. v. Thayer*, 7 S. D. 72; 63 N. W. Rep. 233.

Purchaser at tax sale is entitled to recover back money paid at wrongful, unlawful or erroneous tax sale with 12 per cent. interest. That right is assignable. *Erickson v. Brookings County*, 3 S. D. 434; 53 N. W. Rep. 857.

Date of deed presumed to be date of sale. *Id.*

Rule of caveat emptor applies to purchasers at tax sales independent of statute affording relief. *American Inv. Co. of Emmetsburgh v. County of Beadle*, 5 S. D. 410; 59 N. W. Rep. 212.

When by mistake or wrongful act of treasurer, land is sold for taxes upon which there is no tax due, county is liable for amount paid and statutory interest. *Wallace et al. v. Stutsman County*, 6 Dak. 1; 50 N. W. Rep. 823.

Demand not necessary. *Boynton v. Faulk County*, 7 S. D. 423; 64 N. W. Rep. 518.

Action may be brought against collector of taxes personally for taxes paid under protest. *Rushton v. Burke*, 6 Dak. 478; 43 N. W. Rep. 815.

Mortgagee cannot redeem from void tax sale and recover back money, although paid under protest. *Id.*

2326. Penalty for failure of county treasurer to settle. If the county treasurer shall wilfully and negligently fail to settle with the state treasurer at the time and in the manner above prescribed by law, he shall forfeit to the use of the state the sum of five hundred dollars, which sum may be recovered of him or his sureties on suit brought by the state treasurer in any court in this state having jurisdiction; or in case of failure of the state treasurer to bring such suit, then any citizen of the state may bring the same. [C. L. 1645.]

2327. Warrant book — form. Each county treasurer is required to keep a book called the "warrant book," in which he shall enter every state, 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, SOUTH DAKOTA.

Date.	From what received.	Payee of warrant.	Number of warrant.	Date of warrant.	Amount.	Indorsements.	Principal.	Interest.	Total.

[C. L. 1647.]

2328. Penalty for substituting warrants. If any county treasurer or his deputy or any other person shall knowingly or wilfully 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 state 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. [C. L. 1648.]

2329. Fraudulent receipts — penalty. If any county treasurer in this state, or his deputy, or any person, shall knowingly or wilfully make, issue and deliver, any tax receipt, or duplicate tax receipt, required by section fifteen hundred and ninety-nine, 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 state of South Dakota, or any county in said state, 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 state, 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. [C. L. 1649.]

2330. Dereliction of duty. 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 state, 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. [C. L. 1650.]

2331. Miscellaneous receipts. 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. [C. L. 1651.]

2332. Interest on warrants. When the county treasurer shall receive any county or state 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. [C. L. 1652.]

2333. Redeemed warrants. When the county treasurer of any county shall pay any county order drawn on him by the county commissioner, 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. [C. L. 1653.]

2334. When warrant exceeds tax. 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 indorse 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 indorsed and paid, showing the date of the indorsement, a full description of such county order, including the date thereof, to whom given, the amount for which it was given, and all the indorsements thereon; one of which receipts he shall forthwith file with the county clerk, the other he shall retain as his voucher. [C. L. 1654.]

2335. Part payments applied. 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. [C. L. 1655.]

2336. Delinquent treasurer. If any county treasurer shall fail to make return, fail to make settlement, or fail to pay over all moneys 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 state 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 circuit court of his county. [C. L. 1656.]

2337. Board may remove. Whenever suit shall have been commenced against any delinquent county treasurer as aforesaid, the board of 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. [C. L. 1657.]

2338. Additional sureties may be required. The county commissioners of any one of the counties of this state 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. [C. L. 1658.]

2339. Failure to give additional surety. 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. [C. L. 1659.]

2340. May not discount warrants. 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 state of South Dakota for the use of the county. [C. L. 1660.]

2341. Certain credits forbidden. 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. [C. L. 1661.]

2342. Treasurer not loan or use funds. 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 state of South Dakota for the use of the county. [C. L. 1662.]

Depositing in bank of county funds, subject to check, is not a loan. *Allibone, Treas., v. Ames et al.*, 9 S. D. 74; 68 N. W. Rep. 165.

2343. Payments after settlement. Each county treasury 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 treasurer on the order of the county clerk as foresaid. [C. L. 1663.]

2344. Detailed exhibit. [Ch. 48, '89.] The county clerk or auditor and county treasurer conjointly shall make out quarterly a detailed exhibit under oath, showing the receipts and disbursements of the county for the preceding quarter; 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 quarter next preceding, 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 amounts of funds in the treasury at the time of making said exhibit, on what account paid in, the kind of funds, and the place or places where said funds are deposited. Said exhibit shall be made out quarterly and posted up in the office of the treasurer on the first Monday in January, April, July and October of each year, and said statement shall also be published within ten days thereafter in the official newspapers of said county. [C. L. 1664.]

2345. Loaning and embezzling, how punished. [Ch. 107, '97.] If any county treasurer, state treasurer, other officer or person charged with the collection, receipt, safe keeping, transfer or disbursements of

any portion of the public money or any other funds, property, bonds, securities, assets or effects of any kind, received, controlled or held by him for safe keeping, transfer or disbursement, or in any other way or manner, or for any other purpose, or any part thereof belonging to the state of South Dakota or any county, precinct, district, city, town or school district in this state, shall convert to his own use, or to the use of any other person or persons, body corporate, association or party whatever or in any way whatever, any part or portion of the public money or any other fund, property, bonds, securities, assets or effects of any kind, nature or description received, controlled or held by him for safe keeping, transfer or disbursement, or for any other purpose, belonging to the state of South Dakota, or any county, precinct, district, city, town or school district in this state, or shall use the same by way of investment in any kind of security, stock, loan, property, land or merchandise, or in any manner or form whatever; or shall loan with or without interest to any company or corporation, association or individual, or if any person shall advise, aid, or in any manner knowingly participate in such act, every such act shall be deemed and held in law to be an embezzlement of so much of said money or other securities or property enumerated aforesaid, as shall be thus converted, used, invested, loaned or paid out as aforesaid, and which is hereby declared to be a felony; and upon prosecution, trial by indictment or information and conviction thereof, before any court of competent jurisdiction in this state, such state treasurer, county treasurer or other officer or person, shall be sentenced to imprisonment in the penitentiary of this state 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 the money or double the value of the 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 security, 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. Any failure or refusal of any such officer or person to pay over the public money, or any part thereof, or to deliver any other property or effects with which he is charged, whether belonging to the state or any city or county or precinct or school district in this state, or any public money or property whatever, or any failure to account to, or make settlement within a reasonable time after a written notice so to do; with any proper and legal authority, of the official accounts of such officer or person, shall be held and taken as *prima facie*

evidence of such embezzlement. And the refusal of any such officer or person, whether in or out of office, to pay any draft, order or warrant which may be drawn upon him by the proper officer for any public money in his hands, no matter in what capacity the same may have been received, or may be held by him, or any refusal by any person or public officer named in this section to pay over to his successor in office any public moneys or securities promptly on the legal requirement of any authorized officer of the state, city, county, precinct or school district, shall be taken, on the trial of any indictment against such officer or person for embezzlement, as prima facie evidence of such embezzlement and subject to the penalties hereinbefore prescribed. [C. L. 1665.]

2346. Extraordinary expenditure requires vote. 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. [C. L. 1666.]

SINKING FUND TAX.

2347. Board of equalization to levy sinking fund tax. [Ch. 151, '93.]
 § 1. The state board of equalization, at the session of said board, to commence on the first Monday in August, eighteen hundred and ninety-three, shall determine the rate of state tax necessary to be levied for the purpose of providing a sufficient sinking fund to pay the annual interest and the principal of one hundred thousand dollars of state indebtedness, evidenced by the bonds of the state, issued under the provisions of chapter thirty, of the session laws of eighteen hundred and ninety, within ten years from the first day of March, eighteen hundred and ninety, the day of the final passage and approval of said act, as required by section one, of article eleven, of the state constitution. Said board is hereby authorized and it is [made] their duty to levy a tax at said session, and annually thereafter, at a rate to be determined, each year, by them for the purpose, upon the valuation of property, equalized by them, sufficient to create the sinking fund authorized by this act.

2348. Taxes collected to remain a specific fund. [Ch. 151, '93.] § 2. The sinking fund created by section one is hereby authorized and the said taxes shall be collected as other state taxes are collected; and the treasurer of the state shall keep the moneys paid to him for said purpose in a specific and separate fund to be used for the exclusive purpose above specified.

ABSTRACTERS.

2349. Abstracters to give bond. [Ch. 1, '89.] § 1. It shall be unlawful for any person, firm or corporation to engage in the business of making or compiling abstracts of title to real estate in the state of South Dakota, or to demand and receive pay for the same without first filing in the office of the county clerk or auditor of the county in which such business is conducted a bond to the county in which said business of abstracting is conducted, in the penal sum of ten thousand (\$10,000) dollars, with not less than three sureties, residents of the county, to be approved by the board of county commissioners of such county conditioned for the payment by such abstracters of any and all damages that may accrue to any party or parties by reason of any error, deficiency or mistake in any abstract or certificate of title made and issued by said person, firm or corporation; provided, that in counties of less than ten thousand (10,000) inhabitants, the bond herein required shall be five thousand (\$5,000) dollars.

2350. Certificate of filing. [Ch. 1, '89.] § 2. When any abstracter shall have duly filed his bond and the same shall have been approved, as above provided, he shall be entitled to receive a certificate from such county clerk (or auditor) that said bond has been by the board of county commissioners of such county duly approved, and that the same has been filed in his office, which certificate shall be valid so long as such abstracter shall maintain his surety upon the bond as herein provided for unimpaired. And it is hereby made the duty of said county clerk or auditor after the bond of any abstracter shall have been filed and approved to issue to such abstracter on demand, a certificate of authority in writing, under his hand and official seal, to make such abstracts, which shall continue in force for five (5) years, unless recalled or canceled, as provided in section three of this act. After such certificate shall have been issued, the person, firm or corporation holding the same during the continuance of such certificate, shall have full access to all records of said county during office hours; and it is hereby made the duty of any person, firm or corporation holding said certificate, to furnish an abstract of the title to any tract of land in said county when requested so to do, and on the payment of the fees hereafter provided.

2351. Additional security. [Ch. 1, '89.] § 3. The bond herein provided for may run during the continuance of said person, firm or corporation in said abstract business not to exceed five years, and the board of county commissioners of the county where the bond herein provided for may be filed, may at any time require such abstracter upon ten days' notice to give additional security upon said bond, and show cause why the same should not be declared invalid, and the certificate thereof recalled and annulled, and if within such time the additional security to be approved by said board of county commissioners be not furnished, and no sufficient reason be shown to the commissioners why the same should not be required, then said bond shall be declared invalid and the certificate thereof be recalled and annulled.

2352. Appeal. [Ch. 1, '89.] § 4. The abstracter or complainant may have an appeal to the circuit court of such county from the decision of the board of county commissioners by preserving the evidence taken at the hearing, which shall be certified up by the county clerk (or auditor) of such county, and such appeal shall be summarily decided by the court upon such evidence, and the cost of such appeal including the furnishing of said evidence shall be adjudged against the defeated party.

2353. Penalty for violation. [Ch. 1, '89.] § 5. Any person, firm or corporation violating the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, and not less than twenty-five dollars, for each and every offense.

2354 Officers' certificates of abstracts. [Ch. 1, '89.] § 6. The provisions of this act shall not be construed to prevent the register of deeds, treasurers and clerks of court of the different counties of this state from certifying to abstracts of titles to land from the records of their respective offices; provided, that such officers shall be liable on their official bonds for the faithful performance of all acts as abstracters.

2355. Fees. [Ch. 1, '89.] § 7. The fees allowed said person, firm or corporation doing business under the provisions of this act, shall be as follows, and no more: For the first entry or transfer on any one abstract one (\$1.00) dollar; for each subsequent entry, or transfer on said abstract, twenty-five cents (25c.); for entry or certificate relating to taxes, twenty-five cents (25c.); for entry or certificate relating to mechanics' liens, twenty-five cents (25c.); for certificate as to judgments, which may constitute a lien on the property so abstracted, fifteen cents (15c.); for each name so certified to. And it shall be the duty of said abstracters to continue any abstract so made by them, on the payment

of twenty-five cents (25c.) for each entry made thereon, and twenty-five cents (25c.) for the certificate of continuation thereto.

2356. Seal. [Ch. 1, '89.] § 8. Any person, firm or corporation furnishing abstracts of titles to real property under the provisions of this act, shall first provide a seal, which seal shall have stamped thereon the name and location of said person, firm or corporation, and shall deposit with the county clerk or auditor an impression of said seal, before the certificate mentioned in section two, shall issue, which said seal shall be affixed to every abstract or certificate of title, issued by said abstracters.

UNORGANIZED COUNTIES.

2357. Counties attached. [Ch. 48, '95.] § 1. The unorganized counties of Pyatt, Sterling, Nowlin and Jackson are hereby attached to the county of Stanley for judicial purposes, and for all purposes connected with the filing and recording of chattel and real estate mortgages and deeds or other conveyances, the foreclosure of all chattel and real estate mortgages, and the making of foreclosure sales thereunder, or foreclosure sales or pledges. The unorganized county of Zeibach is hereby attached to the county of Pennington; the unorganized counties of Scobey and Delano are hereby attached to the county of Meade; and the unorganized counties of Harding, Ewing, Choteau, Rinehart, Martin and Wagner are hereby attached to the county of Butte; the counties of Shannon and Lugenbeel to Fall River; Washington and Washabaugh to Custer; Gregory and Todd to Charles Mix; Tripp, Pratt, Meyer and Presho to Lyman; Dewey and Schnasse to Walworth; Boreman to Campbell, for all of the aforesaid purposes.

FORECLOSURE OF CHATTEL MORTGAGES.

2358. Lawful to sell personal property, when. [Ch. 48, '95.] § 2. It shall be lawful to sell personal property under foreclosure of chattel mortgages and pledges in any unorganized county mentioned in section one of this act, in which county such property or any part thereof is recited in the mortgage to be situated; provided, that the parties to any chattel mortgage or pledge may stipulate or make it optional to the mortgagee therein, in which county the foreclosure sale may be had, in which case the contract shall govern the parties.

2359. Sale of live stock under foreclosure. [Ch. 48, '95.] § 3. It shall not be necessary, in order to make a valid foreclosure sale under chattel mortgage or pledge, of any horses, mules, horned cattle, sheep or hogs, where such live stock or any part thereof is running at large

on the range, to have such live stock or any part thereof present at the place of sale, but the purchaser thereof at such sale, and the mortgagee, should he purchase the same, is hereby authorized to gather such live stock as soon as he conveniently can after such sale, wherever they may be found, and take therefrom the number of head of live stock of the kind, character and brand described in the mortgage or pledge, which live stock so sold, gathered and taken shall be the property of such purchaser; provided, that this section shall only apply to the holder of the first mortgage; provided, further, that the mortgage contract shall provide for such sale without taking possession at the time of sale; provided, further, that in case a first mortgagee shall have exercised his right under this section and the purchaser under said mortgage has taken possession of the live stock sold thereunder, a subsequent mortgagee shall thereafter have the right to avail himself of the provisions of this section. Nothing in this section contained shall be construed to authorize any subsequent mortgagee to avail himself of the provisions of this section until after all prior mortgagees have exercised their respective rights thereunder.

2360. Publication of notice. [Ch. 48, '95.] § 4. Notice of foreclosure sale of personal property mortgaged or pledged and situated in any of the unorganized counties named in section one of this act, may be made by publishing such notice in any newspaper printed and published in any organized county to which such unorganized county is attached under the provisions of this act, or by posting conspicuously notices of such sale in six public places, not less than two of which places shall be in the county in which the sale is to take place, and at least two of such notices shall be posted at the county seat of such organized county, as the case may be.

2361. Description of property. [Ch. 48, '95.] § 5. It shall be necessary for, and a sufficient description of cattle, horses, mules and sheep in chattel mortgages which are first mortgages, to plainly and specifically describe the mortgagor's brand, mark or tag, or the distinctive brand, mark or tag by which the stock is generally known, upon such animals, together with a substantial statement of their sex, ages and the number of head thereof.

2362. Stipulations. [Ch. 48, '95.] § 6. It shall be lawful for the parties to stipulate in all mortgages contemplated in this act that any such mortgage containing the aforesaid description of mortgaged cattle, horses, mules or sheep shall be deemed to cover all cattle, horses, mules or sheep, as the case may be, of the kinds, ages and sex described in the mortgage, owned by the mortgagor and situated in the county or counties named as the location thereof in the mortgage and having upon them such brand.

2363. Subsequent mortgages, to contain what. [Ch. 48, '95.] § 7. Every chattel mortgage made subsequently to the execution and filing of the first mortgage upon any such cattle, horses, mules or sheep aforesaid, shall contain in addition to the description of the brand, sex and ages thereof, a specific and accurate statement of the number and location of the animals so mortgaged, and shall specifically state what portion of such animals, describing them, are subject to prior mortgage or mortgages, giving the names of all prior mortgagees thereof, and dates of such prior mortgages. No second or subsequent mortgage upon any such animals shall be of any force or effect as against the first or any prior mortgagee or his assigns, unless said subsequent mortgage fully complies with all the provisions of this section.

2364. County commissioners to designate places for sale of property. [Ch. 48, '95.] § 8. The respective boards of county commissioners of Stanley, Pennington, Meade, Butte, Custer, Fall River, Charles Mix and Lyman [counties] are hereby directed and required to designate at least two and not more than three places in each of the unorganized counties which are by this act attached to said organized counties respectively, at which places foreclosure sales of personal property and pledges may be made, and all such sales made in any of said unorganized counties after such designations are made shall be made at one of the places so designated. Said boards shall also designate such places on or before the first day of June, eighteen hundred and ninety-five. But a failure by any of said boards to comply with the provisions of this section shall not invalidate foreclosure sales made at any place in such counties prior to such action by such boards. Nothing in this section shall be construed to modify or affect the provisions of section two.

2365. Penalty for fraudulent marks and brands. [Ch. 48, '95.] § 9. Any mortgagor or other person who shall brand, mark or tag any live stock, being the increase of such mortgaged property and subject to such mortgage, with any brand, mark or tag other than that of the mortgagor while such mortgage is in force, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not exceeding one hundred dollars, or by imprisonment in the county jail not more than sixty days. All violations of this section committed in an unorganized county shall be subject to prosecution in the organized county to which such unorganized county is attached by the provisions of this act.

2366. Renewal of mortgage. [Ch. 48, '95.] § 10. The renewal of a first or prior mortgage shall not have the effect of postponing such mortgage to the lien of any second or subsequent mortgage of the same

property. But such renewal mortgage shall recite that it is a renewal of a former mortgage and the amount formerly secured thereby.

2367. Time of sale. [Ch. 48, '95.] § 11. Foreclosure sales under any mortgages of chattels made in any county mentioned in this act, may be made at any time within thirty days after taking possession of the mortgaged property where possession is taken of the same for the purpose of foreclosure.

2368. General application. [Ch. 48, '95.] § 12. The provisions of this act shall apply to all unorganized counties and to the counties to which such counties are attached, respectively.

RECORDS.

2369. Register of deeds to procure records. [Ch. 49, '95.] § 1. That in every county to which any unorganized county is attached or shall hereafter be attached for judicial purposes, it shall be the duty of the register of deeds to at once procure a deed record, a final receipt record, a patent record, a mortgage record and a chattel mortgage record, also a brand record and blank miscellaneous record, which shall be labeled with the name of such unorganized county in which he shall record all papers that shall be filed in his office and affecting property located in such unorganized county.

2370. Shall transcribe records — fees. [Ch. 49, '95.] § 2. The register of deeds shall at once proceed to transcribe into the proper books all instruments and papers now recorded or filed affecting any lands or chattels in such unorganized counties, making a complete record thereof, and he shall be allowed therefor by the county commissioners ten cents per folio of one hundred words so copied; provided, that each brand certificate, including the drawings and filing, shall be counted as six folios only.

2371. Records turned over to counties when organized. [Ch. 49, '95.] § 3. Whenever such unorganized county shall be properly organized it shall pay to the county procuring such books and records the original cost of such books, and the transcribing of such records, and thereupon have the complete records turned over, and the register of deeds of such newly organized county shall receipt therefor to the register of deeds having charge of such records.

CHAPTER 16. PUBLIC SECURITIES.

ARTICLE 1. STATE WARRANTS.

2372. Interest. The payment of interest at the rate of ten per centum per annum is hereby legalized upon all warrants heretofore paid by the state treasurer, and it shall be lawful for the state treasurer to pay the same rate upon all outstanding state warrants that have been presented for payment and registration. Warrants hereafter issued shall bear the same rate of interest provided in this section, after presentation at state treasurer's office and indorsement by that officer "not paid for want of funds," as provided by law. [C. L. 1667.]

2373. Funding warrants eight per centum. The state treasurer, with the advice and consent of the auditor and governor, is hereby authorized and directed to pay all state warrants legally issued, that may have been or that may hereafter be presented to him for payment; provided, the money to pay the same can be obtained at a rate of interest not greater than eight per centum; and the auditor is hereby authorized and directed to issue funding warrants in lieu of the warrants so paid, and the treasurer is hereby authorized and directed to apply all state funds by him received and not otherwise lawfully appropriated, to the payment and cancellation of the so-called funding warrants. [C. L. 1668.]

2374. Object of act. The object and intent of this act shall be so construed as to protect the public credit, to secure the funding of all floating warrants at the lowest rate of interest possible to be provided for, and to prevent the sale of any state warrants hereafter issued at a sum less than their par value. [C. L. 1669.]

2375. Act construed. This act shall not be construed so as to authorize in any manner the increase of the public debt. [C. L. 1670.]

2376. Issue of warrants authorized, purposes of. [Ch. 92, '95.] §1. That to protect the public credit and enable the state to provide for current expenses, the state treasurer, with the advice and consent of the governor and auditor, is hereby authorized and directed whenever he finds it necessary to do so in order to provide for the actual and necessary current expenses of conducting the public business of the state, to issue warrants based upon the revenues of the state already assessed for the current and preceding years but not yet collected, and in an amount never exceeding the amount of such revenues so assessed and

not yet collected, and for the purpose only of providing for the immediate and necessary current expenses of the state as aforesaid. Said warrants shall not be negotiated for less than their face value and shall be subject to the same provisions of law as to the rate of interest thereon and otherwise as all other warrants on the state treasury. All money received from the negotiation of such warrants shall be applied only to the payment of the necessary and actual current expenses of the state. And all money hereafter received or collected into the state treasury from or on account of such revenues assessed but not yet collected, or so much thereof as may be necessary, is hereby set apart and appropriated to the payment of such warrants, if any, as may be issued in pursuance of the foregoing provisions, and the state treasurer is hereby authorized and required to make payment of the same from such funds so hereby appropriated.

2377. Treasurer authorized to fix the time when warrants and interests thereon shall be paid. [Ch. 93, '95.] § 1. The treasurer of the state is hereby authorized in his discretion, based upon estimates as to when uncollected revenues already assessed will be paid, to determine and express upon the face of the warrants issued by the state under the act approved January thirtieth, eighteen hundred and ninety-five, entitled, an act to provide for the issue of warrants by the state of South Dakota to defray current expenses based upon revenues assessed and not yet collected, the date when such warrants and the accrued interest thereon shall become due and payable, and the rate of interest the same shall bear, not exceeding in any case seven per centum per annum, and may also provide in said warrants where said interest shall be payable and whether annually or semi-annually.

DUPLICATE STATE WARRANTS.

2378. When duplicate warrants may issue. [Ch. 77, '93.] § 1. That whenever the state auditor, under and by virtue of the provisions of the laws of this state, issues any state warrant upon the state treasurer, in favor of any state or county officer, or other person, company or corporation, for the payment of any moneys out of the state treasury, and the said warrant shall become lost or destroyed, it shall be the duty of the said state auditor to issue a duplicate warrant in favor of the state or county officer, or other person, company or corporation, to whom the original warrant was issued, or to any person, company or corporation legally holding under them, in the manner, and subject to the provisions hereinafter contained in this act.

2379. Owner of lost warrant to make affidavit. [Ch. 77, '93.] § 2. Whenever any warrant drawn by the state auditor for the payment of any money out of the state treasury, as in the first section of this act enumerated, and the same shall become lost or destroyed, any person, company or corporation who was the legal holder or owner of said warrant at the time it so became lost or destroyed, shall make an affidavit, particularly describing the said warrant as to date, amount, number, and fund out of which it was to be satisfied, and also shall state in said affidavit such other facts concerning the loss or destruction of the original warrant as he may have in his possession or knowledge, and shall request in such affidavit that a duplicate warrant may be issued in his favor, and shall file the same with the state auditor within one year after the loss of any warrant as aforesaid.

2380. Bond to be given — notice published. [Ch. 77, '93.] § 3. If it appears that the person, company or corporation filing such affidavit, is entitled to receive such duplicate warrant as aforesaid, the state auditor may issue such duplicate warrant as aforesaid in favor of the person, company or corporation who are entitled to receive the same upon receiving from the person, company or corporation applying for such duplicate warrant a bond, with good and sufficient sureties, which shall be made payable to the state of South Dakota, and shall be drawn in double the amount of the original warrant, and shall be approved by and filed with the state auditor before such duplicate warrant shall issue, conditioned for the benefit of any person, company or corporation damaged by the issuance of such duplicate warrant, and if the state auditor has grave doubts from any cause that the statements contained in the affidavit are untrue, he may in cases where the amount of the warrant is two hundred dollars or over, publish in some newspaper having general circulation the circumstances of the case as contained in the affidavit, and shall give notice of some day certain, when he will issue such duplicate warrant which shall be not less than thirty days after the first publication of the notice; provided, that the expense of publishing such notice shall be paid by the party or parties asking the issuance of such duplicate warrant.

2381. Original warrant to be canceled. [Ch. 77, '93.] § 4. Whenever a duplicate warrant shall be issued under the provisions of this act, the original warrant shall thereupon be canceled, and the state of South Dakota relieved from any claim or liability for the payment of such original warrant.

2382. Discretion of auditor — state not liable. [Ch. 77, '93.] § 5. The state auditor shall use his discretion in carrying out the provisions

of this act as appears to him to be right, and in accordance with justice and honesty; provided, that in no case shall the state be liable for any damages accruing under the provisions of this act.

2383. When reduplicate may issue. [Ch. 77, '93.] § 6. Warrants may be re-duplicated under the provisions of this act in cases where the duplicate becomes lost or destroyed.

2384. Punishment in case of fraud. [Ch. 77, '93.] § 7. Any person who shall secure a duplicate warrant under the provisions of this act, who is not legally entitled to the same, shall be liable to indictment in any of the courts of this state having jurisdiction for the crime of embezzlement or perjury, as the case may be.

2385. State treasurer authorized to pay interest. [Ch. 134, '93.] § 1. That the state treasurer be and he is hereby authorized and directed to pay the interest due from time to time upon funding warrants of the state, out of the fund created for the payment of the annual interest upon the public debt, and to charge the items of interest so paid to said fund.

2386. Seven per centum. [Ch. 71, '89.] § 1. All state warrants hereafter drawn by the proper authorities, shall draw interest after presentation for payment at the office of the state treasurer, and indorsement by that officer as "not paid for want of funds," at the rate of seven per centum per annum.

ARTICLE 2. REDEMPTION OF WARRANTS.

2387. Order of payment. All warrants upon the state treasurer, the treasurer of any county or any municipal corporation therein, issued after January first, eighteen hundred and seventy-five, shall be paid in the order of their presentation therefor. [C. L. 1671.]

2388. Warrant register. The state treasurer and treasurer of every organized county and every incorporated city or town therein shall provide himself with and keep a warrant register, which register shall show in a column arranged for that purpose the number, date and amount of each warrant presented, the particular fund upon which the same is drawn, the date of presentation, the name and address of the person to whose name the same is registered, the date of payment when made, the amount of interest and the total amount paid thereon, with the date when notice to the person in whose name such warrant is registered is mailed as hereinafter provided. [C. L. 1672.]

2389. Duty of treasurer to register warrants. [Ch. 57, '93.] § 1673. It shall be the duty of every such treasurer upon presentation of any warrant by the holder thereof, or by any person presenting the same for registration, to enter such warrant in his warrant register for payment in the order of presentation, and upon every warrant so registered he shall indorse "registered for payment" with the date of registration and shall sign such indorsement; provided, that nothing in this act shall be construed to require the holder of any warrant to register the same.

2390. Payment of registered warrants. [Ch. 186, '95.] It shall be the duty of every such treasurer to set aside the money for the payment of each registered warrant in the order of registration, as soon as money sufficient for the payment of such warrants is received to the credit of the particular fund upon which such warrant is drawn, and the interest upon such warrant shall thereupon cease, and such treasurer shall by mail immediately notify the person in whose name the same is registered, or if he shall receive written notice from some other person that he is the holder of such warrant, then the treasurer shall notify such other person and shall pay and cancel such warrant upon presentation thereof. [C. L. 1674.]

2391. Daily footing of receipts. Every such treasurer shall daily, as moneys are received, foot the several columns of his cash book, and of his register, and carry the amounts forward, and at the close of each year, in case the amount of money received by such treasurer is insufficient to pay the warrants so registered, he shall close the account for that year in such register, and shall carry forward the excess. [C. L. 1675.]

2392. Failure to make footings. Any such treasurer who shall fail regularly to enter upon his cash book the amounts so received, or who shall fail to keep his cash book footed from day to day as required by this act, for the space of three days, shall forfeit for each offense the sum of one hundred dollars, to be recovered in a civil action on his official bond, by any person holding a warrant drawn on such treasurer. [C. L. 1676.]

2393. Inspection of books. The cash book and register of every such treasurer shall at all times be open to the inspection of any person in whose name any warrant is registered and unpaid. [C. L. 1677.]

2394. Penalty for failure to mail notice. Any treasurer who shall for the period of five days after moneys in amount sufficient to pay any registered warrant in its order have been received, fail to mail notice

thereof to the person registering such warrant, shall forfeit to such person ten per centum on the amount of such warrant, and ten per centum additional for every thirty days thereafter during which such failure shall continue. [C. L. 1678.]

2395. Penalty on bond. Any such treasurer who shall fail to register any warrant in the order of its presentation therefor, or shall fail to pay the same in the order of its registration, shall be liable on his official bond to each and every person the payment of whose warrant is thereby postponed, in the sum of three hundred dollars, to be recovered in a civil action. [C. L. 1679.]

2396. Warrants for taxes. Nothing in this act shall be so construed as to prevent payment of taxes in warrants, as now provided by law; provided, that this act shall not apply to the counties of Minnehaha and Union. [C. L. 1680.]

BONDS.

ARTICLE 3. CALLING BONDS.

2397. When may be called. Whenever any state, county, township, city, school or other public bonds shall become payable under any option or provision therein contained, it shall be lawful for the treasurer of this state or of the county, township, city, school or other public corporation as the case may be, issuing such bonds or responsible for their payment, to call in the same for payment and cancellation in the manner hereinafter provided, and after the time specified in such call for presentation of such bonds shall have expired, all interest thereon shall cease. [C. L. 1681.]

2398. Call, how made. Such call shall contain a description of such bonds, giving their date, number and amount, and stating by whom issued and to whom and where payable, and shall also state that on and after a specified date not less than thirty nor more than sixty days after the date of such call all interest on such bonds shall cease. [C. L. 1682.]

2399. Call to be published. Service of such call shall be made by publication thereof for fifteen consecutive days in some daily, or for four consecutive weeks in some weekly newspaper published and of general circulation in the county in which such bonds are payable; provided, that personal service of such call upon the holder or holders of such bonds shall be equivalent to service of the same by publication. [C. L. 1683.]

ARTICLE 4. DUPLICATION OF LOST BONDS.

2400. When made. In case of the loss or destruction of any state, county, township, city, school or other public or municipal bonds, or

any coupons attached or belonging to such bonds or representing any part of the consideration or interest thereof, the owner thereof shall be entitled to receive duplicates of such bonds or coupons so lost or destroyed, from the treasurer of this state or the clerk of such county, township, city, school or other public or municipal corporation, as the case may be, upon complying with the provisions of this act. [C. L. 1684.]

2401. Publication — time limited. Within thirty days after the loss or destruction of such bonds or coupons the owner thereof shall cause to be published in some newspaper published in the capital of this state in case of the loss or destruction of any state bonds, or in case of the loss or destruction of any bonds or coupons mentioned in section sixteen hundred and eighty-four, other than state bonds, in some newspaper published in the county where such bonds were issued, or in case no newspaper is published in said county, in the newspaper published in the county nearest thereto, notice of the loss or destruction of such bonds or coupons, which notice shall contain a description of all bonds or coupons so lost or destroyed, the number, series, amounts, date, term and purpose for which the same were issued, as well as the fact that application has been made for the issuance of duplicates in place and stead thereof under the provisions of this act. Said notice shall be published for ten consecutive days in a daily or for two consecutive weeks in a weekly newspaper. [C. L. 1685.]

2402. Proof of notice — bond for damages. Such owner or person entitled to receive the benefit of this act shall file with the treasurer of this state in case of the loss or destruction of state bonds or coupons, and with one of the officers named in section sixteen hundred and eighty-four in case of the loss or destruction of other bonds or coupons therein mentioned, proof of the due publication of the notice required in section sixteen hundred and eighty-five, together with a good and sufficient bond to be approved by such officer in double the amount of such bonds or coupons so lost or destroyed, executed by such owner with two or more good and sufficient sureties, each of whom shall be resident freeholders of this state and shall justify in double the amount of such bonds, such justification to be made in the same manner as under the chapter entitled "arrest and bail," conditioned upon the payment to the state of South Dakota, or to such county, township, city, school or other public or municipal corporation, as the case may be, of all damages, costs or other disbursements and expenses which may be occasioned or arise out of the issuance of duplicate bonds or coupons under the provisions of this act, or on account of such bonds or coupons so lost or destroyed. Such owner shall also furnish to the officer to whom the application is made for the issuance of duplicates under this

act, satisfactory proof that he is the owner or person entitled to receive the issuance of such duplicates. [C. L. 1686.]

2403. New bonds or coupons to issue. Upon complying with the foregoing provisions, the secretary of this state in case of state bonds or coupons, or the clerk of such county, township, city, school or other public or municipal corporation, as the case may be, shall, if satisfied that the provisions of this act have been complied with and that such applicant is entitled to receive the benefit hereof, issue to him duplicate bonds or coupons for each and every one of such bonds or coupons so lost or destroyed, which shall be dated and numbered the same as those so lost or destroyed, and in all respects exact duplicates thereof, except that the said duplicate bond or coupon shall be stamped on its face "duplicate bond (or coupon) issued in place and stead of bond (or coupon) of even date and number lost or destroyed, issued by virtue of an act of the legislature of the state of South Dakota, approved February fifteenth, eighteen hundred and eighty-seven," and such officer shall thereupon make the proper entry in his books, showing the cancellation of such bonds or coupons so lost or destroyed, and the issuance of duplicates thereof, which duplicates shall from the date of their issuance have the same value, force and effect as the bonds or coupons so lost or destroyed. [C. L. 1687.]

STATE BONDS.

2404. Power to bond. [Ch. 28, '90.] § 1. That three (3) months prior to the date of maturity of any and all interest coupons of all bonds issued by the state of South Dakota, and also all bonds heretofore issued by the territory of Dakota, which were assumed by said state of South Dakota, the state treasurer is hereby authorized and required to set aside from the general fund of the state an amount which, together with the amount of the bond interest fund then on hand, shall be sufficient to pay any and all of said interest coupons as they mature, which sum or sums so set aside shall be used for the purpose of promptly paying said interest coupons as they mature, and for no other purpose; provided, that if at any time the amount of the general fund, together with the bond interest fund, exceeds the amount necessary to pay the interest coupons then next due, such excess shall be returned to the general fund.

2405. State treasurer authorized to issue bonds. [Ch. 30, '90.] § 1. That for the purpose of providing funds to pay the share of the floating indebtedness of the state of South Dakota, not evinced by fund-

ing warrants, assumed by the state of South Dakota, as provided by the constitution of the state of South Dakota, the state treasurer is hereby authorized and empowered to prepare and issue bonds of the state of South Dakota in such amount as shall be necessary to pay the floating indebtedness of the territory of Dakota not evidenced by funding warrants and assumed by the state of South Dakota as aforesaid. Such bonds shall run for a term or period of twenty (20) years, and shall bear interest at the rate of four (4) per centum per annum, with interest coupons attached, and made payable semi-annually in the city of New York, on the first days of January and July of each year; such bonds shall be executed under the seal of the state by the governor and treasurer, and shall be attested by the secretary, and shall be negotiated by the treasurer; provided, however, that said bonds shall not be sold for less than their par value. Any premium received by the state treasurer from the sale of such bonds shall be covered into the general fund of the state of South Dakota.

2406. Bonds for deficit. [Ch. 30, '90.] § 2. That for the purpose of providing funds to pay the casual deficits and failure of the revenue of this state to meet the necessary expenses as provided by the constitution of the state of South Dakota, the state treasurer is hereby authorized and empowered, and it is made his duty, to prepare and issue the bonds of the state of South Dakota, in the amount of one hundred thousand (\$100,000) dollars; said bonds shall run for a term or period of twenty (20) years, and shall bear interest at the rate of four (4) per centum per annum, with interest coupons attached made payable semi-annually, in the city of New York, on the first days of July and January of each year. Such bonds shall be executed under the seal of the state by the governor and treasurer, and shall be attested by the secretary, and shall be negotiated by the treasurer; provided, however, that said bonds shall not be sold for less than their par value. Any premium received by the state treasurer from the sale of such bonds shall be covered into the general fund of the state of South Dakota.

2407. Proceeds of sale to be covered into the general fund. [Ch. 30, '90.] § 3. The amount realized by the state from the sale of bonds authorized by section two (2) hereof shall be covered into the general fund of the state of South Dakota.

2408. Bond register — duty of treasurer. [Ch. 30, '91.] § 1. The state treasurer shall immediately procure a bond register and register

all outstanding bonds of the state of South Dakota, or which this state assumed and agreed to pay as hereinafter provided, and hereafter all bonds issued by the state shall by the treasurer be registered in such bond register, stating the number of such bond, its date of maturity, amount, rate of interest, to whom and where payable.

CHAPTER 17. EDUCATION.

ARTICLE 1. STATE SUPERVISION.

2410. Superintendent, duties of. [Ch. 57, '97.] § 1. The superintendent of public instruction shall be charged with the general supervision of all the county schools and of all the county superintendents of the state. He shall meet county superintendents in convention at least once each year, at such points in the state as he may deem most suitable for that purpose, and by explanation and discussion endeavor to secure a more uniform and efficient administration of the school laws. He shall attend teachers' institutes in the several counties in the state as far as may be consistent with other duties imposed by law, and assist, by lecture or otherwise, in their instruction and management. The state superintendent shall prescribe rules and regulations for holding county normal institutes. He shall render a written opinion to any county superintendent asking it, touching the exposition or administration of the school law, and shall determine all cases appealed from the county superintendent.

2411. Office of. [Ch. 57, '97.] § 2. An office shall be provided for him at the seat of government in which he shall file all papers, reports and public documents transmitted to him by the county superintendents, each year separately, and hold the same in readiness to be exhibited to the governor or a committee of either house of the legislature at any time when required; and he shall keep a faithful record of all matters pertaining to his office. All books presented to his office or purchased therefor shall be carefully preserved and catalogued by him. The educational library thus formed shall be open to the teachers of the state for reference and examination.

2412. Shall print laws. [Ch. 57, '97.] § 3. Immediately after the adjournment of this legislature, and every two years thereafter if deemed necessary he shall cause the school law to be printed, with all the amendments thereto, with such notes, rulings, forms and decisions as may seem of value to aid the school officers in the discharge of their duties. Appropriate reference shall be made to the previous law that has been amended or changed, so as clearly to indicate such amendments or changes. He shall send to each county superintendent a number of copies sufficient to supply the school officers of the county with one copy each.

2413. Shall make report. [Ch. 57, '97.] § 4. On or before the thirty-first day of December preceding each regular session of the legis-

lature, he shall present a biennial report to the governor, which report shall show the condition and needs of the public schools throughout the state, and the workings of the educational system of the state.

2414. To prepare examination questions. [Ch. 57, '97.] § 5. It shall be his duty to prepare all questions for the examination of teachers by the county superintendents, and no county superintendent shall examine teachers with questions not thus furnished. Whoever shall sell, barter or give away to applicants for certificates or to any other person the questions prepared by the superintendent of public instruction, to be used by the county superintendent in the examination of teachers, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five (\$25) or more than one hundred (\$100) dollars.

2415. May appoint deputy. [Ch. 57, '97.] § 6. He shall have power to appoint one assistant, or deputy, who shall receive a salary of one thousand two hundred (\$1,200) dollars, and shall perform such duties pertaining to the office as the superintendent may direct.

2416. Institute conductors. [Ch. 57, '97.] § 7. He shall, on or before March first in each year, prepare and send to each county superintendent a list of the names of institute conductors and county superintendents shall engage conductors for their county normal institutes from the list sent by the superintendent of public instruction.

2417. Meeting of institute conductors. [Ch. 57, '97.] § 8. He shall, on or before the first day of April of each year, call a meeting of the county institute conductors for the purpose of exchanging views relative to the best methods of teaching and for outlining, as far as practicable, a general plan for institute work.

2418. Blanks and blank forms. [Ch. 57, '97.] § 9. All the necessary blanks to be used in transacting the business between the county and the state superintendent shall be supplied by the state superintendent. He shall also furnish each county superintendent with the necessary supply of blanks for the reports of teachers, district clerks and treasurer, and with a book of forms or blanks not furnished by the state, and all blanks used in a county or district must correspond with a form in such book.

2419. Compensation of. [Ch. 57, '97.] § 10. He shall receive such salary as is prescribed by law, and also a sum not exceeding two hundred (\$200) dollars per annum for traveling and other expenses, while traveling on the business of the department. The traveling expense account and the certified bills for necessary office expenses, and for the printing

of such blanks and reports as are required by law, shall be paid on the warrant of the state auditor.

2420. State certificates and diplomas. [Ch. 57, '97.] § 11. He shall have power to grant state certificates and state diplomas. He shall keep a full record of all examinations for state certificates and diplomas, and carefully file in his office all papers relating thereto, the names of all persons to whom certificates or diplomas are issued, and the names of all persons applying for the same shall be preserved with a report of the action in the case. He shall at the close of each quarter send to each county superintendent in the state, a list of the persons receiving state certificates and diplomas.

2421. Examination for same. [Ch. 57, '97.] § 12. Public examinations for state certificates and state diplomas shall be held by the superintendent of public instruction at least twice each year, at such time and place as he may select, as will best accommodate the teachers of the state.

2422. State certificates, how secured. [Ch. 57, '97.] § 13. A state certificate shall be valid for five years, authorizing the person to whom it is issued to teach in any of the common schools for the state, including those in cities and towns, for the period of five years aforesaid. Candidates for state certificates shall present satisfactory evidence of three years' successful experience, such evidence to be genuine, reliable and from disinterested persons. They shall pass a satisfactory examination in each of the following branches: Algebra, geometry, natural philosophy, physiology and hygiene, drawing, civil government, didactics, general history and American literature. The character of the papers submitted in the examination shall determine the candidate's knowledge of the English grammar, orthography and penmanship. The possession of a good moral character shall be deemed a necessary requisite in every candidate, and satisfactory recommendation to establish this shall be submitted by each candidate. Any resident graduate of either of the state normal schools or the state university of South Dakota shall, upon the presentation of his or her diploma, be entitled to receive such state certificate free of charge, provided the graduates of said university have taken a course of pedagogy as given in that institution. A candidate for state certificate, a resident graduate of any college in this state, having taken a course of study equivalent to the advanced course of study prescribed in either of the state normal schools, or the collegiate department of the State University of South Dakota, shall upon filing with the state superintendent his or her diploma, a copy of the course of study pursued and the written indorsement of the faculty of instruction be exempt from the required examina-

tion; provided, the applicant has taught successfully in the public schools for at least one year. The superintendent of public instruction shall issue such state certificate free of charge.

2423. Renewal of same. [Ch. 57, '97.] § 14. Any person receiving two successive five-year certificates, shall be entitled to a renewal of the latter upon presentation of his state certificates, and evidence of continued employment and successful experience in the business of teaching.

2424. State diplomas, how secured. [Ch. 57, '97.] § 15. A state diploma shall be valid for life, and shall authorize the holder thereof to teach in any of the public schools of the state. The requirements of a state diploma shall be as follows:

First. The candidate must present the diploma of the institution of which he is a graduate, with a copy of the course of study therein taught, or he must pass an examination in such branches as will be selected by the superintendent of public instruction.

Second. He must present ample proof that he has had at least ten (10) years' successful experience as a teacher.

Third. He must pass a satisfactory examination in the science and art of education. This shall be more or less extensive as the candidate is or is not a graduate of some reputable normal school.

Fourth. He must pass an examination in two branches selected by him from the following: Geometry, trigonometry, astronomy, chemistry, zoology, or geology. He must also pass an examination in two branches selected by him from the following: English literature, rhetoric, general history, political economy and psychology.

Fifth. He must write a thesis of not less than three thousand (3,000) nor more than five thousand (5,000) words upon some special topic embraced in one of the branches in which he is examined. His thesis the superintendent shall submit to two persons of acknowledged ability to review.

Sixth. All papers must show a correct and intimate knowledge of English.

Seventh. He must be recommended by persons of liberal education, disinterested and having full knowledge of his experience.

Eighth. He must submit a thesis in his own handwriting upon some professional subject chosen by the superintendent.

Ninth. He must submit evidence of a good moral character.

2425. Certificate fee. [Ch. 57, '97.] § 16. Each applicant, except resident graduates from the normal schools of the state, for a state certificate, shall pay a fee of five dollars (\$5.00), and for state diplomas shall pay a fee of ten dollars (\$10.00). All fees thus collected shall be

paid by the superintendent into the state treasury, and shall constitute the teachers' reading circle fund, and shall be subject to the order of the state auditor for that purpose; provided, that should an applicant fail in said examination, one-half of the fee shall be returned; provided, that the state auditor shall issue his warrant on the state treasurer in favor of the treasurer of the state teachers' reading circle upon vouchers filed by the superintendent of public instruction.

2426. May be revoked. [Ch. 57, '97.] § 17. The superintendent of public instruction shall have power to revoke any state certificate or diploma for any cause that would have prevented its issue.

ARTICLE 2. COUNTY SUPERVISION.

2427. Superintendent, duties of. [Ch. 57, '97.] § 1. The county superintendent of schools shall be charged with the general supervision of the schools of his county. He shall visit each school in his county as frequently as possible, at least once each school year, correcting any deficiency that may exist in the government of the school, in the classification of the pupils, or in the methods of instruction in the several branches taught; make such suggestions as he shall deem proper and necessary for the welfare of the school; note the character and condition of the school house, furniture, apparatus and grounds, making such suggestions to the district officers as will in his opinion improve the same. He shall keep a complete record of his official acts, a record of the name, age and post-office address of each candidate for certificate to teach, the standing in each study, and the grade, date of issue and expiration of each certificate granted. He shall keep on file the papers of each candidate for a certificate, except the papers of applicants for first grade, at least for the period for which a certificate is granted. He shall keep a register of the teachers employed in his county, giving name of teacher, district in which employed, date of opening and closing, terms, salary per month, grade of certificate, and date of superintendent's visits. He shall keep a record of all apportionments of the state and county school fund, and such other statistical records as shall be required in making reports to the superintendent of public instruction. In addition to his annual report he shall, whenever called upon by the superintendent of public instruction, make such special report as may be required.

2428. Shall encourage teachers' institutes. [Ch. 57, '97.] § 2. The county superintendent of schools shall encourage teachers' institutes and associations, and shall labor in every practicable way to elevate the standard of teaching, urge the continual employment of successful and efficient teachers, and prevent by all proper means the employment

of those who are incompetent and inefficient, and seek to make the employment of all teachers a responsible public duty, for the public advantage only, and free from favor and sectarian interest.

2429. County certificates, requirements for. [Ch. 57, '97.] § 3. On the first Friday of March, June, September and November, of each year, the county superintendent shall examine persons offering themselves as teachers for the public schools at least two of which examinations shall be held at the county seat, notice of which examinations shall be duly published in the newspapers of the county. The ratio of correct answers, compared with the per centum established by the superintendent of public instruction for the granting of certificates, all evidence disclosed by the examination and the superintendent's personal knowledge of the candidate's ability to teach and govern shall be the reasons for granting or refusing a certificate to any applicant; provided, that no person shall be granted a certificate who does not possess a good moral character.

2430. Grades of same. [Ch. 57, '97.] § 4. County certificates shall be of three grades: The first grade certificates shall be valid for a term of three years in every county in the state. Applicants for a certificate of this grade shall pass an examination in orthography, reading, writing, arithmetic, geography, including physical geography, English grammar, physiology, hygiene, history of the United States, civil government, current events, bookkeeping, American literature, drawing and didactics. The papers of applicants for first grade certificates shall be marked by the county superintendent and forwarded by him to the superintendent of public instruction who shall, after inspection and approval of the same, issue said certificates and send lists of the same without delay to all of the county superintendents of the state. The second grade certificate shall be valid for a term of two years. Applicants for certificates of this grade shall pass examinations in orthography, reading, writing, arithmetic, physiology, hygiene, geography, English grammar, history of the United States, civil government and didactics. Applicants for third grade certificates shall pass examinations in orthography, reading, writing, arithmetic, hygiene, geography, English grammar, history of the United States and didactics. The third grade certificate shall be valid for a term of not more than one year, or less, in the discretion of the county superintendent. Examinations for third grade certificates may be held privately, subject to rules and regulations prescribed by the superintendent of public instruction. Second and third grade certificates shall be issued by the county superintendent. The second grade shall be valid in any school in the county in which it is issued, and the third grade certificate shall be valid only

in such school as may be designated by the county superintendent. The county superintendent shall require a fee of one (1) dollar from every applicant for a certificate and all fees so collected shall at the close of each examination be deposited with the county treasurer to the credit of the county institute fund.

2431. Age of applicant. [Ch. 57, '97.] § 5. No first or second grade certificate shall be issued to any person under eighteen years of age; no third grade certificate shall be issued to any person under seventeen years of age. No person shall be allowed to teach in any school of the state, who is not the holder of a valid certificate. All contracts made in violation of the provisions of this section shall be void.

2432. Revocation of certificate. [Ch. 57, '97.] § 6. The county superintendent is authorized and required to revoke at any time any certificate held in his county under authority of section four (4) of this chapter for any cause which would have authorized or required a refusal to grant the same if known at the time it was granted, and for incompetency, immorality, intemperance, violation of the state law, cruelty, general neglect of business of the school or for refusal or neglect to attend a county institute, and at least one district institute each year, after due notice, provided, that holders of first grade county certificates, in force, who have attended at least four (4) normal institutes, may be excused by the county superintendent, in his discretion, from attendance at institutes for such current year; and the revocation shall terminate the employment of such teacher in the school where he or she may be at the time employed; but the teacher must be paid up to the time of receiving such revocation. The county superintendent must at once notify the district board by whom such teacher is employed of such revocation, and at the same time shall notify the teacher. And in case of a revocation of a first grade certificate he shall notify the superintendent of public instruction by an abstract of the charges thereof. The county superintendent must enter his action in such case of revocation in the books of his office. In revoking a certificate, the county superintendent may act upon his personal knowledge or upon competent evidence obtained from others. In either case the action shall be taken after a fair hearing, and the teacher must be notified of the charge and given a chance to make defense at some time and place stated in said notice. The state superintendent shall notify every county superintendent in the state of the revocation of a first grade certificate. When certificates are revoked the same shall be returned to the office of the county superintendent revoking the same; provided, that if any teacher refuse to deliver said certificate that has been revoked, it shall be the duty of the county superintendent to publish notice of such revocation in the official papers of the county.

2433. County normal institute. [Ch. 57, '97.] § 7. The county superintendent shall hold annually a normal institute, between the first day of April and the fifteenth day of September, of not less than five days' duration, for the instruction of teachers and those who desire to teach, and he shall procure such assistance in addition to the conductor as he may deem necessary. At the close of the normal institute the conductor thereof shall immediately forward to the county auditor a certified list of the persons enrolled therein, together with a certified copy of the certificate of appointment of the conductor, and the county auditor shall present the said list and copy of such certificate to the county treasurer who shall thereupon transfer the sum of two dollars (\$2.00) for each and every person named in said list from the county general fund account to the county institute account. All disbursements of the institute fund shall be upon a warrant of the county superintendent, and no warrant shall be drawn, and no money shall be paid as provided in this section unless the list and copy of the certificate has been filed, and then only upon certified, itemized bills presented to the county superintendent and approved by him for services rendered or expenses incurred in connection with the normal institute.

2434. Medium of communication. [Ch. 57, '97.] § 8. The county superintendent shall at all times conform to the instructions of the superintendent of public instruction as to matters within the jurisdiction of the latter. He shall serve as the medium of communication between the superintendent of public instruction and the district officers.

2435. Salaries of superintendent. [Ch. 57, '97.] § 9. The county superintendent shall receive a salary payable monthly and to be determined as follows: By the value of the property in their respective counties as fixed by the state board of equalization for the preceding year, and by the population of their respective counties. The entire vote of the county multiplied by five shall be the basis of reckoning the population. They shall be entitled to receive one (1) mill on each dollar of the first one hundred thousand dollars (\$100,000), and three-eighths ($\frac{3}{8}$) of one mill on each dollar from one hundred thousand dollars (\$100,000), to six hundred thousand dollars (\$600,000); and one-fourth ($\frac{1}{4}$) of one mill on each dollar from six hundred thousand dollars (\$600,000) to one million one hundred thousand dollars (\$1,100,000) and one-tenth ($\frac{1}{10}$) of one mill on each dollar from one million one hundred thousand dollars (\$1,100,000) to two million six hundred thousand dollars (\$2,600,000) and one-twentieth ($\frac{1}{20}$) of one mill on each dollar on all sums above two million six hundred thousand dollars (\$2,600,000). And in addition to the above-named sum he shall receive for the first one thousand inhabitants within his county

the sum of seventy-five dollars (\$75); for each additional one thousand (1,000) inhabitants within the county or major fraction thereof he shall receive fifty dollars (\$50); provided, that he shall not receive more than fifteen hundred dollars (\$1,500) in any county nor any other compensation; provided, further, that in counties having an assessed valuation of less than three hundred thousand dollars (\$300,000) the salary shall not exceed two hundred dollars (\$200); provided, further, that the county superintendent shall sign his name in the attendance register of each school he visits, showing the date thereof, and that he carry a record book of such visits, which book shall be signed by the teacher of the school visited by him, and such book shall be filed with the county auditor along with the bill of such superintendent's salary for the last month of the calendar year; and it shall be the duty of the county commissioners to deduct from the salary of such superintendent for such last month ten dollars (\$10) for each and every school in the county under the direct supervision of such superintendent, and not visited by him within such calendar year; provided, this act shall not reduce the salary of the county superintendents who were elected and qualified prior to the taking effect hereof.

2436. May close school. [Ch. 57, '97.] § 10. The county superintendent shall have power to close any school under his supervision on account of contagious disease, or for other good and sufficient cause known to him. The county superintendent of any county in this state shall have power, and it shall be his duty, whenever petitioned so to do by any land owner whose place of residence on such land in any independent school district in such county, or whose dwelling house thereon is more than three miles from the location of the school house in such district, to make an order attaching such land, not to exceed one hundred and sixty acres, to any adjoining school district, the school house in which is located within three miles or less of said residence or dwelling house, and thereafter said land shall be a part of the district to which it is so attached.

2437. Visiting schools. [Ch. 57, '97.] § 11. It shall be the duty of the county superintendent of schools to visit the schools of independent districts. In towns having less than one thousand inhabitants, he shall have authority to direct supervision.

2438. Certificate not required. [Ch. 57, '97.] § 12. In cities and other independent districts, persons exclusively engaged in teaching music, drawing, penmanship, bookkeeping, foreign languages, or kindergarten methods, shall not be required to hold a county certificate.

2439. To examine accounts. [Ch. 57, '97.] § 13. It shall be the duty of the county superintendent to examine at least once each year

the records and accounts of the district officer, and to advise them as to the proper form of keeping such accounts. Should any such officer fail to make his report according to law and at the time required the county superintendent is authorized to procure the same by examination of the records, files and accounts of such officer for the purpose of obtaining such information. It shall be the duty of the county superintendent to file with the chairman of the district board a certified statement of the condition of the records, accounts and funds of the treasurer and clerk as shown by said examination.

2440. Vacancy, how filled. [Ch. 57, '97.] § 14. When the office of county superintendent shall become vacant by death, resignation, removal or otherwise, the county board of commissioners shall fill the vacancy by appointment, and the person so appointed shall hold his office until the next election of county officers.

2441. Treasurer's bond. [Ch. 57, '97.] § 15. The county superintendent may at any time require a new or additional bond for the district officers whenever it may be deemed necessary by him, or upon the failure, death or removal from the county of any one of the sureties. All such bonds shall be filed with the county auditor, and in the case of the breach of any conditions thereof, the county superintendent shall cause an action to be commenced and prosecuted thereon in the corporate name of the school district, and all moneys so collected shall be paid into the county treasury to be applied to the use of the schools of said district. If the county superintendent either fail or refuse to bring such action upon the breach of the bond, then any taxpayer of the district may cause such action to be commenced, and the necessary expenses of such action shall be paid, unless otherwise ordered by the court, out of the county treasury from the funds apportioned to such district.

2442. Oath of office. [Ch. 57, '97.] § 16. The county superintendent shall have power to administer oaths of office to all subordinate school officers of his county and to certify to the same, and district clerks are hereby empowered to administer oaths in all matters to which their respective districts may be a party.

2443. Qualifications. [Ch. 57, '97.] § 17. The county superintendent shall qualify on or before the first Tuesday in January of the year following the one in which he is elected, by taking the proper oath of office, and executing a bond in the sum of five hundred (500) dollars with two or more sureties to be approved by the board of county commissioners. The oath shall be subscribed upon the back of the bond, which shall be filed with the county auditor. The sureties of such

bond shall be bound jointly and severally, and upon it an action or actions may be maintained by the board of county commissioners for the benefit of the district, or person, or fund injured by the breach of the conditions thereof.

2444. May provide office. [Ch. 57, '97.] § 18. The county superintendent may provide at the county seat a suitable office for the transaction of business, when not provided by the board of county commissioners, and they shall allow accounts for all necessary expenditures for the use and furnishing of said office and for necessary stationery and printing. All books and pamphlets, circulars of information and other publications from the bureau of information of the United States, and all official publications of this state and other public documents and books relating to education, officially received by him, shall be deemed public property and shall be kept in his office and with other public property and records delivered to his successor. He shall furnish the board of county commissioners such statistics relating to the schools of the county and the officers thereof as they shall desire, and as shall enable them to perform their duties correctly.

2445. Shall report enumeration. [Ch. 57, '97.] § 19. For the purpose of this act, all children in the state, over six and under twenty-one years of age, shall be considered of legal school age and the county superintendent shall, on or before the first day of July of each year, report under oath to the commissioner of school and public lands the enumeration of persons in his county of school age. Such enumeration to be based upon the annual census taken by the district clerks of his county.

2446. Shall make annual report. [Ch. 57, '97.] § 20. The county superintendent shall, on or before the first Monday of September of each year, make a report to the superintendent of public instruction, containing a full abstract of the reports made to him by the district officers and such other matters as he shall be directed to report by the said superintendent, and as he himself may deem essential in exhibiting the true condition of the schools under his charge. Should he fail to make such report he shall forfeit to the school fund of his county, the sum of one hundred (100) dollars and shall, besides, be liable for all damages caused by such neglect.

2447. Appeals from district school boards. [Ch. 57, '97.] § 21. The county superintendent of schools shall when requested give advice relative to school matters to any school officer or person within the county. But such advice shall be advisory only. Any party dissatisfied with a decision of a district school board or board of education relative to

school matters may appeal therefrom to the circuit court of the county, at any time within thirty days after the rendering of such decision. Said appeal is taken by serving notice of appeal upon the district school board or board of education or any member thereof and by filing such notice of appeal and a bond for costs with the clerk of the school district, or board of education. Said notice of appeal must state the decision appealed from, in a clear and concise manner. Said bond for costs shall be in the sum of one hundred dollars with two or more sureties approved by the clerk of said circuit court, conditioned that appellant shall pay all costs therein that may be adjudged against him. When said notice for appeal and bond for costs is filed with the clerk of the school district or board of education as above, said school clerk shall within five days thereafter transmit to the clerk of the circuit court a certified copy of his record of the decision appealed from, and all original papers filed in his office in said matters, including the notice of appeal and bond for costs, therein; and said clerk may be compelled by said circuit court by an order entered upon motion to transmit such certified copies or original papers, and may be fined for neglect or refusal to transmit the same. For such transcript and return, the said school clerk shall receive the usual copying fees, and mileage one way, same to be taxed as part of the costs of suit. And the clerk of the circuit court shall receive and file said papers, and docket same, in the same manner, and shall receive the same fees therefor as in appeals from justices' courts to circuit courts, provided his costs need not be paid beforehand. When any matter is so appealed and filed with the clerk of the circuit court, it shall be docketed in the name of the dissatisfied party as appellant against the school district by its proper name as appellee, and it shall be tried anew in the circuit court according to the regular procedure provided by law therein and shall in all respects be treated as a regular case or action in said court, save as hereinafter expressly provided. No notice of trial or note of issue need be served to have such matter placed upon the trial calendar, and the clerk of said circuit court shall at once enter same upon the trial calendar, and same shall come on for trial in its regular order, except as provided below herein; and the same proceedings shall be had and all judgments or orders therein shall be valid and mandatory as by law provided in any other regular case or action or proceeding in said circuit court; provided, that above parties may agree upon a statement of facts in any actual case and have said case or matter tried anew thereon, before the court in chambers or in open court, after proper appeal and consent of parties. In all of above the circuit court shall render judgment therein and may render final judgment or make such order and direction therein as the circumstances of the case may

require and as the very right of the case may appear and enforce the same upon execution or by mandamus or attachment as for contempt.

2448. Appeals from county superintendents. [Ch. 57, '97.] § 22. Appeals relative to school matters may be taken from the circuit court to the supreme court of the state, and the same proceedings shall be had, and all judgments or orders therein shall be valid and mandatory as by law provided in any other case, or action or appeal or proceeding in said supreme court.

2449. Tax levy. [Ch. 57, '97.] § 23. The county commissioners shall at the time of making the annual assessment and levy of taxes, levy a tax of one dollar (\$1.00) on each elector in the county for the support of the common schools and a further general tax of two mills on the dollar upon all taxable property in the county, to be applied to the same purpose, which shall, with the money received from the state, constitute and be known as the county general school fund; and they shall levy such further tax upon the taxable property of each school district as the board thereof shall certify is required for the support of the schools of that district, which latter special tax, when collected, shall be credited to the district to which it belongs, to be collected at the same time and in the same manner as prescribed by law for the collection of other county and state taxes. The county treasurer shall on the first Monday in January, April, July and October, furnish the county superintendent with a statement of all moneys in the county treasury belonging to county general school fund, and shall pay the same upon the order of the superintendent to the treasurers of the respective public school corporations of the county. The county treasurer shall also pay at such times as are required by law to the treasurer of each school corporation, all of the school money collected for such corporation, and shall take duplicate receipts for the money paid. He shall send one of the receipts to the clerk of the said school corporation.

2450. Apportionment of school money. [Ch. 57, '97.] § 24. The county superintendent shall, on or before the second Monday in January, April, July and October of each year, apportion the money in the county treasury belonging to the county general school fund to the several public school corporations within the county in proportion to the number of children of school age residing therein. He shall also draw orders on the county treasurer in favor of the several school treasurers of the county for the amount apportioned to them, and shall take their receipts therefor.

2451. District institutes. [Ch. 57, '97.] § 25. It shall be the duty of county superintendents to hold district institutes during the school

year, and he shall actively and earnestly promote the same. In holding said institutes he may group two or more districts in institute organization. Said institutes shall be so arranged that the teachers in each district or group of districts shall have the benefit of such institutes at least twice during the school year.

2452. Not hold other office. [Ch. 57, '97.] § 26. The county superintendent shall not hold the office of county commissioner or school district officer; provided, that no person shall hereafter be elected or appointed to the office of county superintendent who is not the holder of at least a valid first grade certificate secured at least one year prior thereto, and who has not had at least twenty-four (24) months of actual experience in school teaching.

2453. Clerk's report. [Ch. 57, '97.] § 27. The clerk of each school district shall, on or before the first day of August of each year make, sign, transmit, or deliver to the county superintendent, an annual report in writing covering the preceding school year and including all the facts and statistics of the school district, which are required to be included in the county superintendent's state report, and in the same order therein required except any item therein peculiar to the county and not belonging to the district. He shall also report the branches of study in the graded and ungraded schools separately, the names and addresses of the district school officers, and the dates when their terms severally expire, and all other facts and statistics which the county superintendent may require for his report to the superintendent of public instruction. He shall also enumerate the number of children of legal school age, male and female, designating each separately, residing in the districts on the first day of May previous to the date of such report, and shall file such census report with the county superintendent on or before the first Monday of June of each year.

2454. Treasurer's report. [Ch. 57, '97.] § 28. At the annual meeting of the school board on the second Tuesday of July of each year, the incoming district board shall make settlement with the district treasurer, who shall at that meeting make his annual report in triplicate, one copy to be preserved in the treasurer's office, and upon approval of the same by the district board, one approved copy to be filed with the district clerk and one approved copy to be transmitted by said clerk to the county superintendent on or before the first day of August of each year. On making said settlement it shall be the duty of the district board to compare the certified bills allowed by the board with the orders issued, also to compare the orders paid by the district treasurer the preceding year with the clerk's record of orders issued; and also compare the record of money received and orders paid by said

treasurer with his annual report, and if found correct the report shall be approved, the orders canceled and filed with the district clerk. The board shall cause to be posted in three public places or published in a newspaper of general circulation in the county an itemized statement of the receipts and expenditures for the preceding school year.

2455. Failure of officer to report. [Ch. 57, '97.] § 29. If any district officer fails or neglects to transmit or deliver to the county superintendent the annual report of his district at the time required by law it shall become the duty of the county superintendent to visit said district officer at his residence in said district and to obtain such report. Upon sworn statement of such visit being filed by the county superintendent with the county auditor, the county commissioners shall order the sum of five dollars to be transferred from the general fund of said district to the county general fund and a county warrant for that amount shall be issued to the county superintendent.

2456. Mileage of county superintendent. [Ch. 57, '97.] § 30. The county superintendent shall receive five (5) cents per mile each way for every mile necessarily traveled in attending such meetings of the county superintendents as may be convened by the state superintendent at any time; provided, that such mileage shall not be regarded as compensation.

ARTICLE 3. SCHOOL CORPORATIONS.

2457. School corporations defined. [Ch. 57, '97.] § 1. In all counties organized for school purposes under the district system, at the taking effect of this act, each school district shall be and remain a district school corporation, and each civil township in every county in the state not organized for school purposes under the district system at the taking effect of this act shall be and is hereby constituted a district school corporation. Each township in every county in the state which at the taking effect of this act consists of territory not organized into a civil township shall be and remain a district school corporation; provided, whenever such school township shall be organized into or annexed to a civil township, such civil township shall thenceforth constitute a district school corporation; provided, further, nothing in this act shall be construed to alter the boundary lines of any school district, or of any school township organized prior to the passage of this act, except as hereinafter provided.

2458. New counties — districts of. [Ch. 57, '97.] § 2. In any county hereafter organized the county commissioners shall divide the county, or the settled portions thereof, into school districts. In the formation of such districts and the arrangement of their boundaries as

provided for in this section, the boundary lines of congressional townships shall be made the boundaries of the districts; provided, that no district shall be thus formed in which there are not at the time of formation at least ten children of legal school age.

2459. Township district, how subdivided. [Ch. 57, '97.] § 3. In any county containing township districts, such districts may be divided as follows: Upon a receipt of a petition signed by at least one-third of the qualified electors of any township district, it shall be the duty of the district clerk to post a notice on the door of each school house in said district calling an election for the purpose of dividing said township district into new districts of one school each. The election shall be held on the second Tuesday of March at a convenient place designated by the school board, at a regular or special meeting thereof; provided, that said petition and posted notices shall contain a plat of the proposed division, and a copy of said plat shall be posted by the district clerk at the polling place on the day of election; provided, further, that said petition shall be filed with the district clerk at least twenty days prior to said election, and said notices shall be posted at least ten days before said election, specifying time and place thereof. The provisions appertaining to the election of district school officers shall apply to this election as near as applicable. If a majority of the votes cast at this election are in favor of division and said petition and poll book of said election are on file with the county auditor, the board of county commissioners and county superintendent shall, at the next regular meeting of the board of county commissioners in April following such election, divide the said township into districts in accordance with the returns of said petition and election. Any township district which comprises two or more civil townships may be divided into school districts corresponding to the civil townships. The division and apportionment of indebtedness shall be made and the officers of such new districts elected in the manner provided in the case of the division of township districts into districts of one school each. (2) At the regular meeting of the board of county commissioners in July following said election, the county commissioners and the county superintendent shall make an equitable apportionment of the property and indebtedness (other than bonded) of the township district among the new districts formed therefrom; provided, that should there be any bonded indebtedness outstanding against the township district, the county commissioners shall levy a tax annually on the property of the new districts formed therefrom sufficient to pay the interest and principal of the bonds as the same become due. The county treasurer shall apply such tax to the payment of said bonded indebtedness, and when the bonds are paid and canceled the county treasurer shall place the unused balance, if

there be any, of such tax, to the credit of the districts formed therefrom. (3) Upon the receipt of a petition signed by a majority of the qualified electors of any civil township in said county, having districts smaller than civil townships, the county commissioners and the county superintendent of schools shall declare that the school district shall comprise a civil township and the county superintendent shall appoint the necessary officers as hereinafter provided in section one of chapter four of this act, who shall hold until the next election; provided, that in the union of said minor districts all indebtedness shall be adjusted as provided in paragraph two of this section.

2460. Officer's report in case of subdivision. [Ch. 57, '97.] § 4. In each new district formed by division as provided for in section three, the officers thereof shall be chosen at the annual school meeting following. The clerk of each original township district shall, on or before the first Monday in July following the division as provided for in section three of this chapter, forward to the county auditor a certified statement of the finances of the township district, including the bonded and other indebtedness. The treasurer of each original township district shall also within the same time turn over to the county treasurer all money belonging to said district and such money shall be apportioned to the districts succeeding as provided in section three of this chapter.

2461. Name of school district. [Ch. 57, '97.] § 5. Every school district which consists of a civil township shall be named the school district of county, state of South Dakota, with the name of the civil township inserted in the blank before the word school, and the name of the county in which it is situated inserted before the word county. Every school district consisting of territory not organized into a civil township, but which has been named by a distinctive name shall have such distinctive name inserted in the blank before the word school. Every school district consisting of territory not organized into a civil township and which has no distinctive name, shall be called school district No. of county, with its proper number inserted in the blank after the word number, and the proper name of the county inserted.

2462. Boundaries, how changed. [Ch. 57, '97.] § 6. After the boundary lines of the several school districts in a county are established as provided for in the preceding sections of this chapter, such boundaries at any regular meeting may be changed, or new districts created by the board of county commissioners and the county superintendent of schools, upon a petition for such change signed by ten legal voters residing in the district to be affected by such change; due notice having

been given by the county auditor to the school board of the districts to be affected by such proposed change; if, in the judgment of the commissioners and the superintendent, such change is for the best interest of the patrons of the schools; provided, that when petition is made for the formation of a district from parts of two or more counties, the commissioners of the said counties may in their discretion appoint a joint commission to establish the boundaries of the proposed district and to adjust all accounts relating thereto. The said joint commission shall appoint the necessary officers in said district. It shall be the duty of the county superintendent of the county in which the school house of said district is located to fill all vacancies that may occur thereafter; to license the teacher for said school and to have supervision of the same. Whenever district boundaries shall be changed under the provisions of this act, it shall be the duty of the county commissioners and the county superintendent to make an apportionment of property and indebtedness as provided in section three of this chapter.

2463. School district corporations. [Ch. 57, '97.] § 7. Every school district established under the provisions of this act shall be and is hereby constituted a distinct corporation for school purposes and, under its own proper name or number of such corporation, may sue and be sued, contract and be contracted with, and acquire, purchase, hold and use personal and real property for the purposes mentioned in this act; and sell and dispose of the same.

2464. County superintendents shall make plat of county. [Ch. 57, '97.] § 8. The county superintendent shall, within thirty days after the first school election held as provided herein, transmit to the superintendent of public instruction a plat of the county showing the boundaries and name of each school district therein. He shall also record a copy of the same, together with all the proceedings of the county board done under this act in a proper book kept for the purpose. He shall promptly furnish such officer with a corrected plat, showing any changes at any time in the boundaries of school corporations. The superintendent of public instruction shall furnish directions for the suitable preparation and construction of such plats in regard to the scale of marking, et cetera, in order to secure a uniform series of maps for binding for office use.

ARTICLE 4. DISTRICT SCHOOL BOARD.

2465. School district officers. [Ch. 57, '97.] § 1. On the third Tuesday in June, eighteen hundred and ninety-one, there shall be elected in each district a school board consisting of a chairman, clerk

and treasurer, for the term of one, two and three years respectively, and annually thereafter one member of said board for the term of three years; provided, that in districts containing two schools, not more than two of such officers shall be patrons of the same school, and in districts containing three schools not more than one such officer shall be elected from any school in said district; provided, further, in districts containing more than three schools, the patrons who are electors of such schools as are not represented on the school board by the school officers herein provided for, shall meet on the fourth Tuesday in June at their respective school houses and elect one of their number a member of the school board whose term of office shall be for one year. Each officer and member elected under the provisions of this act shall qualify on or before the second Tuesday in July following his election, and shall hold his office for the number of years for which he is elected, and until his successor is elected and qualified. Whenever a school district shall be formed, the county superintendent of schools shall appoint temporary officers for such school district who shall serve until the first annual school election following and until their successors are elected and qualified. Whenever a vacancy may occur from any cause in any school office under the supervision of the county superintendent, he shall also fill such vacancy by appointment, and such officer shall hold such office until the next election when the vacancy shall be filled by a vote of the people.

2466. Annual election of school officers. [Ch. 57, '97.] § 2. Not less than ten days before the election required under section one of this chapter, the district clerk shall post notices in three public places in the district. Said notices shall specify the time and place of holding the election, and the hours during which the polls shall be kept open. The chairman and clerk of the district board shall serve as judge and clerk of the election. If they are not present at the time of opening the polls, voters present may select a judge and clerk from their number. The polls shall be opened at two p. m. and kept open two hours in districts having but one school, and four hours in districts having more than one school. All persons who are qualified electors under the constitution of the state shall be qualified to vote at any school district election. The voting must be by ballot and the polls and tally lists supplied through the county superintendent must be kept and returned to the district clerk, who shall, upon the receipt of the same, issue the certificate of election to the persons receiving the greatest number of votes as shown by the certified returns; provided, that in case of a tie, in the election of an officer, the contest shall be settled at once by lot by the board of election.

2467. School boards, meeting of. [Ch. 57, '97.] § 3. District boards having under their control more than one school shall hold four regular meetings each year for the transaction of business, to wit: On the second Tuesday in July, the last Tuesday of August, November and March, at such place and hour as may be fixed by the school board. District school boards having under their control but one school shall meet annually on the second Tuesday in July; provided, that the district clerk shall when requested by a majority of the board call a special meeting at any time by giving written notice to each member of the board; provided also, that in any school district five legal voters may petition the clerk to call a special meeting of the voters at any time, and it shall be the duty of the clerk to call each meeting by posting such notices at least ten days prior to the time of meeting in three of the most conspicuous places in the district. Such notices shall give the date, hour and object of the meeting.

2468. Chairman, duties of. [Ch. 57, '97.] § 4. The chairman shall preside at all meetings of the board. In his absence the chairman pro tempore shall preside. The chairman shall perform such other duties as are prescribed in this act. He shall receive two (2) dollars for each regular meeting of the district board attended by him, and shall receive no other compensation for his services as a district officer.

2469. Clerk, duties of. [Ch. 57, '97.] § 5. Clerk of the board shall keep an accurate record of all proceedings of the board, give or post all notices, make out all reports and statements, shall take census of the children of legal school age in his district and file the same with the county superintendent on or before the first Monday of June in each year and perform all other duties required by law or by order of the board.

2470. Clerk and treasurer, bonds of. [Ch. 57, '97.] § 6. The school treasurer shall on or before the second Tuesday in July following his election, and before entering upon his duties, give a bond to the school district conditionel that he will honestly and faithfully discharge his duties as treasurer; that he will render a true account of all funds and property that shall come into his hands, and pay and deliver the same according to law; provided, that a bona fide deposit of school funds in the name of the school district in any bank or depository selected by a majority of the school electors of any school district, shall relieve the school treasurer thereof from liability for loss of said deposited funds while on deposit therein. Such bond shall be in such penal sum as may be fixed by the clerk and chairman of the board, but not less than double the sum as nearly as can be ascertained to come into his hands

in any one year, shall be signed by two or more sufficient sureties and shall be approved by the clerk and chairman of the board. In case the said chairman and clerk refuse or neglect to approve the bond of the district treasurer and the sureties thereto, such treasurer may present the same to the county superintendent and serve notice thereof upon the said chairman and clerk, and upon due proof of such notice being made to the county superintendent, he shall unless good cause for delay appear, proceed to hear and determine the sufficiency of the bond and sureties thereto, and may approve the same, and such approval shall be in all respects valid. The clerk of the school board shall on or before the second Tuesday in July following his election, and before entering upon his duties, give a bond to the school district conditioned that he will honestly and faithfully discharge his duties as clerk, that he will render a true account of all property that shall come into his hands as such clerk and deliver the same according to law. Such bond shall be in penal sum of one hundred (100) dollars and shall be signed by two or more sufficient sureties and shall be approved by the chairman and treasurer. In case of neglect or refusal to approve such bond, it shall be approved in such a manner as provided in this section for the approval of the bond of the treasurer.

2471. Treasurer, duties of. [Ch. 57, '97.] § 7. The school treasurer shall keep such accounts and make such reports as are required of him by law. He shall pay no money out of the school funds in his hands except upon the warrant of the school board, signed by the clerk and countersigned by the chairman. He shall pay all warrants properly drawn and signed when presented so long as there is any money in his hands or subject to his order for their payment, and shall draw all money in the hands of the county treasurer belonging to his district at least once every three months in each year.

2472. Warrants, payment of. [Ch. 57, '97.] § 8. Whenever a warrant is presented to the treasurer for payment and there is no money in his hands or subject to his order for the payment of such warrant, he shall indorse on such warrant "presented for payment this day of, 18.., and not paid for want of funds," and sign such indorsement. If he has in his hands or subject to his order money for the part payment of such warrant he shall make such part payment and indorse the sum on the warrant and add "balance not paid for want of funds," signing the same. He shall keep a correct register of all warrants so presented and indorsed. Every warrant thus presented and indorsed shall draw interest for the amount unpaid at seven (7) per centum per annum until paid; provided, that whenever there shall come into the hands of the treasurer or subject

to his order, money applicable to the payment of any warrant which has been so presented and registered, the treasurer shall notify in writing, by mail, the drawee of such warrant at his last known place of residence to present such warrant for payment, and interest shall cease upon every such warrant ten days after such notice shall have been sent and such money shall be held for the payment of such warrant.

2473. Warrants, how drawn. [Ch. 57, '97.] § 9. Every warrant drawn by the clerk of the district board on the district treasurer shall specify the purpose for which the money is paid, the fund on which it is drawn, and the person, firm or corporation to whom paid; provided, that no warrant shall be issued, except for an indebtedness incurred prior to its issue.

2474. Official oath and bonds, where filed. [Ch. 57, '97.] § 10. All official bonds of school district officers shall be filed with the county auditor. The oaths and reports of school district officers shall be filed with the county superintendent.

2475. Salary of clerk and treasurer. [Ch. 57, '97.] § 11. The district clerk and treasurer shall each receive a salary of five dollars (\$5) per annum for every school in the district; provided, that such salary shall not exceed twenty-five dollars (\$25) per annum; provided, further, that the county superintendent shall, upon the receipt of the annual report of the clerk and treasurer, if correct, complete, and received on or before August first of each year, notify the chairman of said school board that such reports have been received. Thereupon the chairman of the school board shall sign the warrant for their annual salary and no part of said salary shall be paid until said notice.

ARTICLE 5. POWERS AND DUTIES OF THE DISTRICT SCHOOL BOARD.

2476. Powers and duties of board. [Ch. 57, '97.] § 1. The district school board shall have the general charge, direction and management of the school or schools of the district, and the care, custody and control of all the property belonging to it, subject to the provisions of this act. They shall organize, maintain and conveniently locate schools for the education of all children of school age within the district. When pupils reside at an unreasonable distance from their nearest school house in the school district, the school board may make reasonable financial provision for the transportation of such pupils to some other school in the district, or for their tuition in some other district; provided, such provision shall be only for actual attendance at public school. They shall make all necessary repairs to the school houses, outbuildings and appurtenances and shall furnish fuel and all necessary

supplies for the schools. They shall employ the teachers for the school or schools of the district, and may dismiss any teacher at any time for plain violation of contract, gross immorality or flagrant neglect of duty; provided, that every contract for the employment of a teacher must be in writing. That they shall have power to admit to the schools in the districts pupils from other districts, when it can be done without injuring or overcrowding such schools, and to make regulations for their admission and the payment of their tuition therein. They shall also have power to make proper and needful rules for the assignment and distribution of pupils to and among the schools in the district, whenever it is deemed necessary by the board, and for the best interests of the pupils and district. Any school may be discontinued by the district board, who shall make arrangements for the transfer of pupils to some other school, and for their tuition therein. They shall assist and co-operate with the teacher in the government and discipline of the schools, and may make proper rules and regulations therefor. They may suspend or expel from school any pupil insubordinate or habitually disobedient; provided, that such suspension shall not be for a shorter period than ten days nor beyond the end of the current term of school. They shall have power to levy upon the property in the district, a tax for school purposes of not exceeding twenty (20) mills on the dollar in any year, which levy shall be made by resolutions of the board at their regular July meeting in specific amounts. The clerk shall immediately thereafter notify in writing the county auditor of the amount of tax so levied. The school board shall have the power to direct the removal of a school house to a more convenient location upon a vote of a majority of the electors of the school district; provided, that in districts in which there shall be but one school house a two-thirds majority vote shall be necessary to remove such school house from the center of the district to any other point in the district, or from any point in the district to any other point in the district, except such removal shall be to the center of the district, in which case, a majority vote shall be sufficient for such removal; provided, further, that any point within one hundred and sixty rods of the geographical center of the district shall be deemed the center for the purposes of this act. The board shall have power, and on a demand of a majority of the qualified electors of the said district, it shall be the duty of the board to provide for such extra branches of study added to the regular course as may be desired by said electors. And the school board of districts having more than three schools may on or before July first of any year, upon vote of the school electors, establish a boundary of the subdivisions of the people of their respective districts for the purpose of electing a director for each school, as provided in this act. On the fourth Tuesday

of June of each year, in every district where there are more than three schools wherein such subdivisions have been established as above, there shall be elected one member of the school board from each subdivision not already represented on the school district board; such member must be a resident school elector, directly interested in the welfare of the school for which he is chosen. His term of office shall be one year, and until his successor is chosen and qualified. The member so elected shall within ten (10) days after such election notify the clerk of the school district board and file his oath of office with the county superintendent; and in case of failure to qualify, the school board shall forthwith appoint a member of said school. Five (5) days' notice shall be given by posting notices in three (3) conspicuous places in the vicinity, one of which shall be on the school house door; but no such meeting shall be illegal for want of such notice in the absence of fraud; and the legality shall be determined, if called in question, by the county superintendent, whose decision shall be final. Such meetings shall have power to determine what branches in addition to those prescribed in section thirteen (13), chapter eight (8) of this act, shall be taught in their respective schools and at what time within the school year such school shall be held, and to direct such repairs as they may deem necessary in their school house, fixtures and outbuildings, and may petition the district school board for the removal of the school house to a more convenient location, for the erection of a new one or the sale of an old one and the lands belonging thereto; and upon any other subject connected therewith. And it shall be the duty of the member of the school board of such school to submit all such instructions to the clerk of the district school board within ten (10) days after such instructions have been given by the meeting. And it shall be the duty of the district board to carry into execution all such instructions pertaining to the branches to be taught and the time at which school shall be held; provided, that it shall be the duty of the district board to furnish, equip and supply all the schools in the district according to the several necessities of said schools, and with as nearly equal school advantages as possible; provided, further, that nothing contained herein shall prevent the district board from exercising a sound discretion as to all matters pertaining to the duties of their office not specifically provided for in this act.

2477. Discontinuance of school. [Ch. 57, '97.] § 2. The patrons of any school, or any school district board may petition the county superintendent for the temporary discontinuance of such school; said petition setting forth reason therefor and the remedy proposed, which shall be signed by a majority of the patrons or the school district board. Whereupon the county superintendent shall order a hearing thereon,

giving out notice of time and place of such hearing to the patrons of the school, and district board, and if after such hearing he shall deem it to the best interests of said school and district, he may order the school therein discontinued and the pupils thereof transferred to some other school nearest the home of said pupils.

2478. The electors may instruct board. [Ch. 57, '97.] § 3. In every district containing but one (1) school a majority of the qualified electors thereof shall at any regularly called district school meeting have authority to instruct the district school board concerning the management of the school and to levy taxes for the maintenance of the same; provided, that such taxes shall be levied at the annual school meeting in July of each year, and shall not exceed two (2) per centum of the taxable property in the district; if any school district fails to hold in any school year, at least six months of school in any school house in said district, providing no legal discontinuance be had, it shall be the duty of the county superintendent to notify the county treasurer of the amount of money due said district from the apportionment fund for the quarter ending September thirtieth of the succeeding year, which amount shall be returned to the county general school fund, unless said district board made provisions for the instruction of the pupils for the required time in some other school. In case of failure in any district to levy a tax sufficient to support a school for the number of months above named, the board of county commissioners shall levy a tax on the property of the district that will be sufficient for the purpose; provided, that such tax shall not exceed two (2) per centum of the taxable property in the district.

2479. Clerk shall notify auditor. [Ch. 57, '97.] § 4. It shall be the duty of the district clerk on or before the twentieth day of July in each year to notify the county auditor of the amount of tax voted at the last annual meeting or levied by the district school board and of any and all other tax of which notice has not previously been given. The notice shall be substantially in the following form:

District clerk's office School district No.
 Co., South Dakota.
 189..

To the county auditor of county, South Dakota.

Sir:— You are hereby notified that a meeting of
 district No. held on the day of the
 following tax was voted for the coming school year:

For tuition fund	Dollars
For general fund	Dollars
For sinking fund	Dollars
Total	Dollars
Signed	

District Clerk.

2480. Accounts, how kept. [Ch. 57, '97.] § 5. All moneys apportioned by the county superintendent to the district or received from the district tax for tuition purposes shall constitute the tuition fund. All moneys received from other sources shall constitute the general fund. The treasurer shall keep one general account wherein he shall set down on the debit side all the money he shall receive as treasurer from all sources whatever, each item of entry showing plainly the source of the particular payment to him, with the date thereof, and he shall set down upon the credit side all the money he shall pay out for all purposes whatever; each item thereof showing to whom and for what purpose each payment was made with the date thereof. The debit side shall always be balanced by the total of the credit side with the funds on hand added thereto. At the beginning of every school year he shall open such account anew for that year, and the first item shall be an entry on the debit side of the balance on hand, if any, for the preceding year. He shall also keep a separate set of accounts of different classes of receipts and expenditures, showing severally the following:

RECEIPTS.

Amount received into the tuition fund from all sources.....
 Amount received into the general fund from all sources.....
 Amount received into the sinking fund from all sources.....

EXPENDITURES.

Amount paid for tuition.....
 Amount paid for school houses, sites and furniture.....
 Amount paid for incidental expenses.....
 Amount paid as interest on bonds.....
 Amount paid upon debts and liabilities not included in other items....

The several accounts shall be separately kept, and not required to balance. The accounts for different classes of receipts shall be kept separately from the accounts of the different classes of expenditures; but every entry in each shall fully and clearly designate its source or purpose, with the dates.

2481. School site. [Ch. 57, '97.] § 6. The district school 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 move any school house in the district to any site designated by the voters at any regular or special district meeting; 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 or other property

of the district, and if necessary, execute a conveyance of the same in the name of the district 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.

2482. Board may take land. [Ch. 57, '97.] § 7. It shall be lawful for any board of district officers to take and hold any land not exceeding two (2) acres, situated on a section line or upon a regularly laid out highway, legally chosen as a school house site by a lawful district meeting. If the owner of such land refuse or neglect to grant such site to the district, or cannot be found, the superintendent of that county shall upon application proceed according to law to condemn and acquire title to the same in the name of said district; provided, that no site shall be thus taken within forty (40) rods of any residence when the owner thereof objects to its being placed there, and not in any orchard, garden or public park. But this section shall not apply to any incorporated town.

2483. Conditions. [Ch. 57, '97.] § 8. The title acquired to such school site shall be for such purpose only, and if not used for the purpose of maintaining a public school thereon for two successive years the title shall revert to the original owner upon repayment of the sum paid with the value of improvements made by the district and without interest.

2484. Reports in English. [Ch. 57, '97.] § 9. All reports and records of district officers, and proceedings of district meetings shall be in the English language, and if any money belonging to any district shall be expended for supporting a school in which the English language shall not be taught exclusively, the county superintendent or any taxpayer of the district may in civil action in the name of the district recover said money from the officer so expending it.

2485. Clerk of district meetings. [Ch. 57, '97.] § 10. The district clerk shall be clerk of all district meetings, but if such clerk shall not be present, or being present shall refuse to act 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.

2486. Webster's dictionary. [Ch. 57, '97.] § 11. The district school board shall provide for each school in the district one Webster's international dictionary. And they may also provide for each school other high grade library books and books of reference as they may deem for the best interests of the schools; provided, said expense shall not exceed ten dollars for any school in one year. And it is especially pro-

vided further that no school district board shall buy any apparatus, chart or similar device, unless said board is expressly authorized so to do by a majority of the school electors of such school district at a regular or regularly called special meeting thereof.

2487. Clerk shall draw warrants. [Ch. 57, '97.] § 12. The clerk shall draw and sign all warrants for the payment of money for the purpose legally ordered by the board, and every such warrant shall be countersigned by the chairman of the board. No warrant shall be drawn by the clerk except upon presentation of a bill for the service rendered, duly certified, and the same shall be retained by him as voucher and placed on file in his office.

ARTICLE 6. TEACHERS AND SCHOOLS.

2488. Teachers, how employed. [Ch. 57, '97.] § 1. Teachers shall be employed only upon the exhibition of a teacher's certificate valid in the county where employed, and then only upon a written contract signed by the teacher and at least two (2) members of the district school board which shall specify the date at or about which the school shall begin, the length of time it shall continue, the wages per month, and the time of payment thereof, and said contract shall be signed in duplicate and one (1) copy filed in the office of the clerk and the other retained by the teacher. The following conditions shall be understood as forming a part of every contract whether expressed therein or not: (1) The teacher shall not hold school upon any of the following legal holidays: The thirtieth (30th) day of May, the fourth (4th) day of July, the day appointed by the president of the United States for national thanksgiving, and the twenty-fifth (25th) day of December. But such days shall count as part of the term and the teacher shall be paid therefor, but such pay shall not be drawn for any Saturday or Sunday. (2) School shall be adjourned during the session of the county normal institute, when the teachers have been notified by the county superintendent. (3) Teachers shall receive into their schools pupils transferred thereto by order of the district board, or admitted by its authority. (4) Teachers shall send the notices, keep the proper entries in the register which shall show the grade in which each pupil belongs, the pupil's standing as shown by the examination and such other information as will assist the succeeding teacher in the conduct and management of the school, and make reports required by law, and the county superintendent shall promptly furnish without cost to the teacher the blank forms for such reports, and the district board shall furnish for use the proper register prepared, so that the required facts and statistics can be kept in an orderly manner. (5) Teachers shall classify the

work of their schools in accordance with the suggestions, grades and outlines as prescribed in the course of study recommended by a majority of the county superintendents of the state and the superintendent of public instruction, and shall hold examinations and make reports as prescribed therein.

2489. Teachers' register. [Ch. 57, '97.] § 2. The board of every school district shall provide one (1) suitable classification school register for each school therein, and keep the same as part of the records of his office except during each term of school, when the teacher shall keep said register and record therein each day the attendance of each pupil and the absence of those enrolled, and all other items necessary for making the report in the next section required.

2490. Teachers shall make report. [Ch. 57, '97.] § 3. Every teacher of a common school under this law shall at the expiration of each term immediately make out full duplicate reports and deliver one copy thereof with the school register to the school clerk, and one to the county superintendent. Such report shall show the names, ages and sex of all pupils admitted during such term, the branches taught, the studies pursued by each pupil, the text books used, the number of days taught, the number of days each pupil was present, the average daily attendance, the date when school began and ended, the salary per month, and information concerning the school and property. In addition to the above the report shall show the grade in which each pupil belongs, his standing as shown by the monthly and term examinations, the daily program of class recitation, and such other information as may be required by the county superintendent. The teacher shall also make monthly reports to parents and to county superintendents when blanks for same are furnished. And until such report shall have been so filed with the clerk, the school board shall not pay more than ninety (90) per centum of the wages of such teacher for his or her services as such, for the time required to be covered by such report.

2491. Shall give notice. [Ch. 57, '97.] § 4. Every teacher on commencing a term of school shall give written notice to the county superintendent of the time and place of beginning such school, and the probable time when it will end.

2492. Penalty for disturbing a school. [Ch. 57, '97.] § 5. Every person, whether pupil or not, who shall wilfully molest or disturb a public school when in session, or who shall wilfully interfere with or interrupt the proper order or management of a public school by acts of violence, boisterous conduct or threatening language, so as to prevent the teacher or any pupil from performing his duty, shall upon con-

violation thereof be punished by a fine not exceeding twenty-five dollars (\$25.00), or by imprisonment in the county jail not more than ten (10) days, or by both such fine and imprisonment.

2493. Reading of moral instruction. [Ch. 57, '97.] § 6. Moral instruction, intending to impress upon the minds of the pupils the importance of truthfulness, temperance, purity, public spirit, patriotism and respect for honest labor, obedience to parents, and due reference for old age, shall be given by every teacher in the public service of the state.

ARTICLE 7. COMPULSORY EDUCATION.

2494. Attendance, period of — penalty. [Ch. 57, '97.] § 1. Every person having under his control a child between the age of eight and fourteen years, shall annually cause such child to attend for at least twelve weeks, at least six weeks of which attendance shall be consecutive in some public day school in the city, town or independent district in which he resides, which time shall commence with the beginning of the first term of the school year or as soon thereafter as due notice shall be served upon the person having such control of his duty under this act. For every neglect of such duty, the person offending shall forfeit to the use of the public schools of his school corporation a sum not less than ten (10) dollars nor more than twenty (20) dollars, and shall stand committed until such fine and costs of suit are paid. But if the person so neglecting shall show to the board of education, or district school board, as the case may be, that such child has attended for a like period of time a private day school, or that instruction has otherwise been given for a like period of time to such child in the branches commonly taught in a public school, that such child has already acquired the branches of learning taught in the public schools or that his physical or mental condition as declared by a competent physician is such as to render such attendance inexpedient and impracticable, then such penalty shall not be incurred. Such fine shall be paid when collected, to the county treasurer, or the treasurer of such city or independent district in which such child and parents reside, to be accounted for by him, as other money raised for school purposes.

2495. Arrest of truant children. [Ch. 57, '97.] § 2. It shall be the duty of the president of the board of education in every city or other independent district and the chairman of every district school board carefully to inquire concerning all supposed violations of this act and to enter complaint against all persons who shall appear to be guilty of such violation. It shall also be the duty of said officers to arrest children of a school going age who habitually haunt public places and have no lawful occupation, and also truant children who absent

themselves from school without leave, and to place them in charge of the teacher having charge of the public schools which said children are by law entitled to attend. And it shall be the duty of said teacher to assign such children to the proper classes and instruct them in such studies as they are fitted to pursue. Any school officer failing or neglecting to perform the duty required of him by this chapter shall be liable to a fine of not less than ten (10) nor more than twenty (20) dollars for every such offense.

2496. Employment of children. [Ch. 57, '97.] § 3. No child between eight and fourteen years of age shall be employed in any mine, factory or workshop or mercantile establishment, or, except by his parent or guardian, in any other manner during the hours when the public schools in the city, town, village or district, are in session, unless the person, firm or corporation employing him shall first procure a certificate from the superintendent of the schools of the city, town or village, if one be employed, otherwise from the clerk of the school board or board of education, stating that such child has attended school for the period of twelve weeks during the year, as required by law, or has been excused from attendance as provided in section one (1) of this article; and it shall be the duty of such superintendent or clerk to furnish such certificates upon application of the parent, guardian or other person having control of such child, entitled to the same. Every owner, superintendent or overseer of any mine, factory, workshop or mercantile establishment, and any other person who shall employ any child between eight and fourteen years of age contrary to the provisions of this article, shall be deemed guilty of a misdemeanor, and for every such offense shall, upon conviction thereof, be fined not less than ten dollars (\$10) nor more than twenty dollars (\$20) and costs.

2497. False statement. [Ch. 57, '97.] § 4. Any person having control of a child who with the intent to evade the provisions of this act, shall make a wilfully false statement concerning the age of such child, or the time such child has attended school, shall for such an offense forfeit a sum not less than ten dollars (\$10) nor more than twenty dollars (\$20) for the use of the public school corporation.

2498. Prosecutions, how and by whom brought. [Ch. 57, '97.] § 5. Prosecutions under this act shall be instituted and carried on by the district school board or the chairman of the board of education in independent districts; provided, that all prosecutions of school officers for their neglect of duty regarding the provisions of this chapter, shall be instituted and carried on by the county superintendent.

2499. Courts having jurisdiction. [Ch. 57, '97.] § 6. Police and municipal courts, justices of the peace and judges of the county court

shall have jurisdiction within their respective counties of the offenses described in this act.

ARTICLE 8. MISCELLANEOUS.

2500. Definition of school days. [Ch. 57, '97.] § 1. The school year shall begin July one (1) and end June thirty (30). A school month shall consist of twenty (20) days, a school week of five school days, a school day of five and one-half school hours exclusive of intermissions; provided, that the time specified as a school day shall not apply to primary schools, and Saturdays shall not be counted as school days.

2501. Illegal contracts. [Ch. 57, '97.] § 2. No contract binding on the school district shall be made in any case except by the school board or board of education, acting as such, at a regular or regularly called special meeting, excepting contracts made for the employment of teachers.

2502. Penalty for false report. [Ch. 57, '97.] § 3. Any clerk or treasurer of a school district who shall wilfully sign or transmit a false report to the county superintendent, or wilfully sign, issue or publish a false statement of facts purporting or appearing to be based upon books, accounts or records, or of the affairs, resources and credit of the school district, shall upon conviction be punished by a fine not exceeding fifty dollars (\$50) or by imprisonment in the county jail not exceeding fifteen days. And any clerk or treasurer of a school district who shall wilfully mutilate or destroy any of the books, accounts or records of his office, or who shall refuse to deliver to his successor in office all the books, accounts, moneys and records of his office upon demand of his successor for the same, shall be deemed guilty of a misdemeanor and it shall be the duty of said successor to begin action immediately upon the official bond of such officer for the recovery of such money or other property.

2503. Must qualify. [Ch. 57, '97.] § 4. No officer of a school district shall perform any duties of the office nor receive any of the property, money, books or papers belonging to the office, nor any money from the county treasurer, or warrant thereof, until he has fully qualified as required by law.

2504. Vacancies, how filled. [Ch. 57, '97.] § 5. If any person appointed or elected to a school district office shall for one month after the time fixed by law fail to qualify or give bonds as provided by law, the office shall be deemed vacant and the county superintendent shall, when notified of such vacancy, proceed to fill the same by appointment.

Whenever a treasurer of a school district, by election or appointment, becomes his own successor, he shall give new bonds, and all such officers shall qualify anew upon entering upon a new term. If from sickness or any other cause, such officer shall become incapacitated or unable to attend to the duties of his office, the fact shall be certified to the county superintendent by the clerk of the school district. If the clerk fails to notify the county superintendent of any vacancy that may exist, it shall be the duty of the remaining officer or officers to do so, and a successor shall be appointed to fill such vacancy, and such appointment shall be held official until the next election, when any vacancy shall be filled by an election.

2505. Records open to inspection. [Ch. 57, '97.] § 6. All reports, and all books, records, vouchers, contracts and papers of all kinds relating to the school houses, schools and school business in the district in the office of the clerk or treasurer, shall be at all times open to the inspection of the chairman, who shall advise and aid toward securing correct records and accounts and legal reports, and they shall likewise be open to the inspection of state and county superintendents, and any particular paper or record shall be exhibited at reasonable hours to the examination of any voter or taxpayer.

2506. Tax levy to satisfy judgment. [Ch. 57, '97.] § 7. Whenever any final judgment shall be obtained against any school corporation, the board thereof shall levy a tax upon the taxable property in the corporation for the payment thereof, and such tax shall be collected as other school taxes, but no execution shall issue against any school corporation; such tax or taxes shall not be greater than two (2) per centum in any one year, and any surplus fund in the treasury of the school corporation may be appropriated to the payment of a judgment. If the school board shall refuse or fail to levy such tax, the judgment creditor may apply to the board of county commissioners, who shall cause such tax to be levied upon the property of the school district. When collected, it shall be paid over by the county treasurer to the judgment creditor, whose receipt therefor shall be delivered the same as money to the treasurer of the school corporation by the county treasurer. Such levy may be repeated until the judgment is paid.

2507. Jurisdiction in school suits. [Ch. 57, '97.] § 8. Justices of the peace shall have jurisdiction in all cases in which a school corporation is a party interested when the amount that is claimed does not exceed one hundred dollars (\$100) and the party shall have the right to appeal as in other cases.

2508. Fines and penalties. [Ch. 57, '97.] § 9. All fines and penalties not otherwise provided for in this act shall be collected by action in any court of competent jurisdiction.

2509. Assessor, duty of. [Ch. 57, '97.] § 10. Every township or county assessor shall, on or before the first day of July in each year, furnish to the clerk of each school corporation, the property of which he assesses, a certificate of the valuation of all real property and all personal property and of the total of these subject to taxation within the corporation for the current year.

2510. Majority rule. [Ch. 57, '97.] § 11. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them unless it be otherwise expressed in the section or law giving the authority, and when a decision or direction is made by the majority of such officers or persons, it is the duty of the one to whom its execution belongs by law, to execute the same in all respects as if he had favored the particular decision or direction, as if it were authorized unanimously.

2511. Annual school election. [Ch. 57, '97.] § 12. The school district annual election shall be held upon the third Tuesday of June in each year.

2512. Branches to be taught. [Ch. 57, '97.] § 13. Instruction shall be given in the common schools of the state in the following branches in the several grades in which each may be required, viz.: Reading, writing, orthography, arithmetic, geography, English grammar, history of the United States, physiology and hygiene, with special instructions as to the nature of alcoholic drinks and narcotics and their effect upon the human system, and civil government.

2513. Form of oath. [Ch. 57, '97.] § 14. All school district officers and directors, before entering upon the duties of their respective offices, shall take an oath to support the constitution of the United States and of the state of South Dakota, and faithfully and impartially to perform the duties of such office.

2514. Penalty for defacing school property. [Ch. 57, '97.] § 15. Any person who cuts, defaces or otherwise injures any school house, apparatus or outbuilding thereof, is liable to suspension or expulsion; and on the complaint of the teacher to the director, or to the clerk of the school board, the parents or guardians of such pupils shall be liable for all damages.

2515. Reading circle. [Ch. 77, '99; ch. 57, '97.] § 16. It shall be the duty of the county superintendent to encourage the formation of teacher's reading circles in his county. He shall report on or before December fifteenth of each year to the secretary of the state teachers' reading circle the enrollment of all persons in his county known to him to be pursuing the work of said circle; plans by which the work thereof is being carried on and all matters of general interest thereto. He shall, under the direction of the superintendent of public instruction, arrange for an annual examination in the state teachers' reading circle course in his county, and it shall be his duty to preside at the same or to appoint some competent person to do so; to collect all papers submitted and to forward the same promptly to the secretary of the board of managers. He shall co-operate as fully as possible with the managers of the state teachers' reading circle in advancing the work of that organization.

2516. School district defined. [Ch. 57, '97.] § 17. Any school district containing two or more schools except those governed by the provisions of chapter ten relating to cities, towns and other independent districts, are for the purpose of this act defined to be township districts.

ARTICLE 9. SCHOOL BONDS.

2517. Vote for issue of bonds. [Ch. 57, '97.] § 1. Whenever the qualified electors of a school district shall at any regular or special meeting held for that purpose, vote to issue school district bonds for the purpose of building and furnishing a school house and purchasing ground on which to locate the same, or to fund an outstanding indebtedness, the district school board may lawfully issue such bonds in accordance with the provisions of this act; provided, however, that the question of issuing bonds shall not be submitted to a vote of the district and no meeting shall be called for that purpose until the district school board shall have been petitioned in writing by one-third of the voters resident in said school district.

2518. Bond election. [Ch. 57, '97.] § 2. Before the question of issuing bonds shall be submitted to a vote of the school district, notices

shall be posted in at least three (3) public and conspicuous places in said district, stating the time and place of meeting, the amount of bonds proposed to be issued and the time in which they shall be made payable; said notices shall be posted not less than twenty (20) days before the meeting, and the voting shall be done by means of written or printed ballots, and all ballots deposited in favor of issuing the bonds shall have thereon the words, "for issuing bonds," and those opposed thereto shall have thereon the words "against issuing bonds;" and if a majority of all the votes cast shall be in favor of issuing bonds, the school board, through its proper officers, shall forthwith proceed to issue bonds in accordance with the vote, but if a majority of all the votes cast are against issuing bonds, then no further action can be had, and the question shall not again be submitted to a vote for one year thereafter, except for a different amount.

2519. Denomination of bonds. [Ch. 57, '97.] § 3. The denomination of the bonds which may be issued under the provisions of this act shall be fifty dollars (\$50) or some multiple of fifty, not exceeding two hundred dollars (\$200) and shall bear interest at the rate of not exceeding seven per centum per annum, payable semi-annually in accordance with interest coupons, which shall be attached to said bonds; and no greater amount than one thousand dollars (\$1,000) can be issued for any one school house except in towns and villages of more than three hundred inhabitants, and in such districts the amount shall not exceed four per centum of its assessed valuation and may be made payable in not less than three nor more than fifteen years from date, in annual, biennial or triennial succession. In addition to the amount that may be already assessed under existing laws, there shall be levied upon the taxable property of the school district so issuing bonds, and collected as other taxes are collected, a sum sufficient, not exceeding three mills on the dollar of assessed valuation of said districts to pay interest upon said bonded indebtedness, and each year preceding the year in which any annual, biennial or triennial payment of bonds become due, a further tax not exceeding six (6) mills upon the dollar shall be levied to meet said annual, biennial or triennial payments. This section shall apply only to bonded indebtedness incurred under the provisions of this act.

2519a. Bond election returns. [Ch. —, '99.] § 1. That when any school district in this state shall have voted to issue its negotiable bonds for the purposes now provided by law, and before the county

auditor shall certify to the bonds as required in section 4 of sub-chapter 9, chapter 57, laws of 1897, the said district shall file with said auditor certified copies of the records of said school district ordering said election and the record and poll book of said election, and unless said records show a strict compliance with law, the said certificate shall not be executed.

2520. Requirements as to form. [Ch. 57, '97.] § 4. Whenever any bonds are issued under the provisions of this act, they shall be lithographed or printed on good bond paper and shall state upon their face the date of their issue, the amount of the bond, to whom and for what purpose issued, also the time and place of making, and the rate of interest to be paid. They shall have printed upon the margin the words "authorized by the act of the legislative assembly of the state of South Dakota, A. D. eighteen hundred and ninety-one," and upon the back of the bonds a certificate signed by the county auditor in substantially the following form: "I certify that the within bond is issued in accordance with law, and is within the debt limits permitted by the constitution of the state of South Dakota and in accordance with a vote of school district at a regular (or special) meeting on the day of A. D. 18... to issue bonds to the amount of Dollars." They shall be signed by the chairman and clerk of the school board and shall be registered and numbered in a book to be kept by the clerk for that purpose, in which shall be entered the number, date and name of the person to whom issued, and the dates when the same shall become due.

2521. Sinking fund. [Ch. 57, '97.] § 5. In addition to the amount that may already be assessed under existing laws, there shall be levied upon the taxable property of the school districts so issuing bonds, and collected as other taxes are collected, a sum sufficient, not exceeding three mills in the dollar of assessed valuation of said district to pay interest upon such bonded indebtedness, and after five years in like manner a further tax not to exceed six (6) mills on the dollar for a sinking fund, to be used in payment of such bonds when they become due, and for no other purpose except that whenever there may be sufficient funds on hand belonging to such sinking fund, the school board may in their discretion purchase any of its outstanding bonds at

their market value and pay for the same out of the sinking fund. This section shall apply only to the bonded indebtedness incurred under prior acts.

2522. Sale of bonds. [Ch. 57, '97.] § 6. Whenever any bonds shall be issued under the provisions of this act, the school district treasurer shall have authority to negotiate and sell such bonds for not less than par, and the proceeds shall be used exclusively for the purpose of building and furnishing a school house, and in payment for a site for the same and for necessary buildings.

2523. Bonds a lien. [Ch. 57, '97.] § 7. Bonds issued under the provisions of this act shall be a lien upon the taxable property of the school district issuing them, and when any school board neglects or refuses to levy a tax in accordance with law to meet any outstanding bonds or interest thereon, the county auditor shall have power to levy such tax, and when collected to apply the proceeds to the payment of such coupons and bonds.

2524. Cancellation of bonds. [Ch. 57, '97.] § 8. Whenever the bonds of any school district shall have been reduced by the school board, they shall be canceled by writing or printing in red ink the words "canceled and paid" across each bond and coupon, and the date of payment and the amount paid shall be entered in the clerk's register against the proper number of bond and the bonds so canceled shall be filed in the office of the district treasurer, until all the outstanding bonds are paid, when they shall be destroyed in the presence of the full board.

2525. Contract for building school house. [Ch. 57, '97.] § 9. Whenever any school house is built with funds provided in the manner herein authorized, the school board shall advertise at least thirty (30) days in some newspaper printed in the county, or by posting notices for the same length of time in at least three of the most public and conspicuous places, if no newspaper is published in the county, for sealed proposals for building and furnishing such school house in accordance with plans and specifications which shall be furnished by the school board, reserving the right to reject any and all bids, and if any of the proposals shall be reasonable and satisfactory said board shall award the contract to the lowest responsible bidder, and shall require of such

contractor a bond in double the amount of the contract, conditioned that he will properly account for all money and property of the school district that may come into his hands, and that he will perform the conditions of his contract in a faithful manner and in accordance with its provisions, and in case all the proposals shall be rejected, said board shall advertise anew in the same manner as before and until a reasonable bid shall be submitted; provided, however, that no member of the district school board, clerk or treasurer, shall be interested directly or indirectly in any contract for building or furnishing any school house provided for in this act.

2526. Application of this act. [Ch. 57, '97.] § 10. The provisions of this act shall be applicable to and authorize the issue of bonds by such school districts as have already built school houses and issued orders or warrants therefor, and any school district may vote to bond the indebtedness incurred by reason of building and furnishing school houses, or to refund any bonded indebtedness.

ARTICLE 10. CITIES, TOWNS AND OTHER INDEPENDENT DISTRICTS.

2527. Law, where in force. [Ch. 57, '97.] § 1. All cities now organized or hereafter to be organized under the general act to provide for the incorporation of cities, shall be governed by the provisions of this act; provided, that any city, town or village now organized under a special act, either for civil government or educational purposes, may at any time adopt the provisions of this act by a majority vote of the electors; provided, further, that any town or village having a population of one hundred inhabitants or over within a radius of one mile of the center may adopt the provisions of this chapter. In such cases the county superintendent shall, upon petition of a majority of the legal voters within the proposed district, call the first election therefor by posting notices in not less than three of the most public places in the district or districts in which the said town or village is situated. Said notice shall contain a full description of the boundaries of the proposed district, and also the time and place of holding the election. If a majority of the voters in the district or districts in which the said town or village is situated shall vote for the incorporation of said town or village as a corporation for school purposes, then it shall be considered as authorized, and the county superintendent shall, without delay, publish notices for an election of officers for said corporation.

2528. Committee as arbitration. [Ch. 57, '97.] § 2. Whenever a new corporation is authorized as provided in section one of this chapter, the county superintendent, the president of the board of education of the district thus organized, and the chairman of the school districts affected by the organization of the new district, shall constitute a committee of arbitration for the purpose of adjusting all property interested between the new corporation and the district or districts affected by its formation. The title to all real property granted to the new corporation by the committee of arbitration shall be made over to the said corporation or corporations in which it was previously vested upon order of the said committee. And all personal property granted to the said new corporation by the committee shall be delivered to the proper officers by those having it in charge upon demand accompanied by the order of the committee. It shall be the duty of the county superintendent to file with the county auditor a correct plat showing the adjustment of district boundaries in consequence of the formation and organization of a district as above provided.

2529. A free system of schools. [Ch. 57, '97.] § 3. Each corporation organized under this chapter shall establish and maintain a system of free common schools, which shall be kept open not less than six nor more than ten months in any one year and shall be free to all children of legal school age residing within such corporation.

2530. Adjoining territory — how attached. [Ch. 78, '99; ch. 57, '97.] § 4. Territory outside of the limits of any organized city, town or village but adjacent thereto, may be attached thereto, and territory within the limits of any city, town, village or independent district organized for school purposes, and adjacent to any school district may be attached to said school district whether said independent district has been organized by special act or otherwise, under the following conditions:

First. Application for such change must be made by a majority of the electors of such adjacent territory by written petition.

Second. Upon receipt of such petition, the county superintendent shall call a committee to decide upon granting or refusing the petition, said committee consisting of himself, the president of the board of

education of said organized city, town, village or independent district and the chairman of the district board.

Third. The committee shall consider the interests of the two corporations concerned, the convenience of the petitioners and the permanent school interest, and if they deem it proper shall grant the petition and issue an order authorizing the attaching of said territory to the city, town, village, independent district or school district to which it is adjacent, and if to a city, town or village such order shall specify to what ward or wards such territory shall belong for all school purposes. Provided, That when territory has been attached prior hereto the board of education shall at any regular meeting determine to what ward or wards such territory shall belong for all school purposes.

Fourth. The committee shall also have power to adjust all property interests involved in the change which concern the two corporations interested. Before the issuance of an order authorizing the change they shall make an equitable adjustment of any question of indebtedness involved.

Fifth. A record of the decisions of the committee shall be transmitted to the clerks of the school board and board of education interested and a copy forwarded to the county auditor by the superintendent upon ratification of the action of the committee by the district school board and the board of education.

Sixth. Such territory shall from the date of the order authorizing such change be considered a part of the corporation of said city, town, village, independent district, or of the said school district. Provided, That such order shall not be issued until after the actions and decisions of the committee are ratified by the board of education and the district school board.

The taxable property of such adjacent territory shall be subject to taxation and bear its proportion of all expenses incurred in the erection of school buildings and maintaining the schools of such corporation, and for the purpose of such taxation the property so attached shall be assessed by the assessor of the city, town, village or independent district or school district to which such territory is attached. Provided, That territory more than two miles from the limits of such city, town or village, shall not be considered adjacent territory to which the provisions of this section may apply, unless the electors of such territory shall unanimously petition to be thus attached.

and considered as adjacent territory. Provided further, that when an independent school district of any incorporated city or town is situated so near the centre of a civil or congressional township as to leave a fraction of said civil or congressional township impracticable or inconvenient for school purposes after attaching adjacent territory to said independent school district to the two mile limit as provided by law, then in that case the committee provided for in this act may upon a petition of a majority of the electors of such civil or congressional township attach the surrounding territory and make the independent district to conform to the civil or congressional township line for school purposes only, and in such case such committee may by a majority vote thereof, upon the petition of two-thirds of the electors of such surrounding territory and of two-thirds of the electors of such city, or town, issue its order attaching such surrounding territory to such city or town as aforesaid, and all the foregoing provisions shall apply to such actions of said committee except that such order shall go into effect at the expiration of thirty days from the date thereof, and it shall not be necessary that the actions and decisions of such committee be ratified by the district school board or board of education before the issuance or going into effect of such order.

2531. Shall be a corporation. [Ch. 57, '97.] § 5. Every district organized under the provisions of this chapter shall be a body corporate, and shall possess the usual powers of corporations for public school purposes, and may sue and be sued, and be capable of contracting and being contracted with, and of taking and holding any land for a school site, not exceeding two acres, chosen by the board of education at a regular meeting of said board, and in case the owner or owners of said land, or any part thereof, shall refuse or neglect to grant such site to the district, then said district shall have power to take such land for said site in the manner provided by law for the taking of private property for public use. And shall have power to hold and convey such personal or real property as it may at any time possess. All actions brought by or against such corporation shall be in the name of the board of education of the city, town or village (as the case may be) of the county of the state of South Dakota.

2532. Conveyances of property. [Ch. 57, '97.] § 6. All conveyances of property in cities and incorporated towns mentioned in the pre-

ceding section, shall be signed by the mayor of said civil corporation and attested by the clerk, and shall have the seal of the corporation affixed thereto, and be acknowledged by the mayor in the same manner as other conveyances of real estate.

2533. A board of education. [Ch. 57, '97.] § 7. When any city or town is divided into wards, at each annual city election there shall be elected a board of education consisting of two members from each ward who shall be elected by the qualified voters thereof; one of whom shall be elected annually and shall hold his office for the term of two years and until his successor is elected and qualified; provided, that at the first election under this act, two members shall be elected from each ward, one of whom shall hold office until the next annual election, and the other until the second annual election; provided, that in all corporations not organized as cities and in all cities and towns not divided into wards, there shall be elected as many members of the board of education as there are members of the township board or board of trustees to be elected at the same time and places and for like terms; there shall also be elected at the first election held under the provisions of this act in such cities and towns, one member of such board of education who shall be voted for by the qualified electors at large in such city or town and shall hold his office for two years or until his successor is elected and qualified. In all cases where there is no organization for civil government, there shall be three members of the board, one of whom shall be elected annually; provided, further, that no member of the city council shall be a member of the board of education.

2534. Power to fill vacancy. [Ch. 57, '97.] § 8. The board of education shall have power to fill any vacancy which may occur in their body; provided, that any vacancy occurring not more than thirty days previous to the annual election shall be filled at the first annual election thereafter.

2535. Shall maintain and control schools. [Ch. 57, '97.] § 9. The board of education shall have power to organize and maintain a system of graded schools, to establish a high school whenever, in their opinion, the interests of the school corporation demand the same, and to exercise sole control over the schools and school property of the corporation.

2536. Organization, how made. [Ch. 57, '97.] § 10. The board of education at its regular meeting in April of each year shall organize by the election of a president and vice-president, each of whom shall serve for a term of one year, and they shall also elect a clerk not a

member of the board who shall receive such compensation for his services as the board may allow; provided, that in districts newly organized under this act the board shall, within thirty days after their election, proceed to organize and elect officers as aforesaid who shall serve until the time of the regular meeting in April following.

2537. Duties of president and clerk [Ch. 57, '97.] § 11. It shall be the duty of the president to appoint all committees and to countersign all warrants drawn upon the treasury for school moneys. It shall be the duty of the clerk to present at all meetings of the board, keep an accurate journal of its proceedings, take charge of its books and documents, sign all warrants for school money and perform such other duties as the board may require. Before entering upon the discharge of his duties the clerk of the board of education shall give a bond in a sum to be fixed by the board, not less than five hundred dollars, with good and sufficient sureties to be approved by the board.

2538. Tax levy. [Ch. 57, '97.] § 12. The board of education shall, on or before the fifteenth day of August of each year, levy a tax for the support of the schools of the corporation for the fiscal year next ensuing, not exceeding in any one year thirty mills on the dollar on all personal and real property within the district which is taxable according to the laws of the state, and which levy the clerk of the board of education shall certify to the county clerk, who is hereby authorized and required to place the same on the tax roll of said county to be collected by the treasurer of the county as other taxes of the county and paid over by him to the treasurer of the board of education, of whom he shall take a receipt in duplicate, one of which he shall file in his office and the other he shall transmit to the clerk of the board of education.

2539. Treasurer, how chosen — bond of — duties. [Ch. 57, '97.] § 13. At the annual municipal election there shall be elected members of the board of education provided for herein and a treasurer of the board of education. The treasurer shall be elected each year, to hold for one year, or until his successor is elected and qualified. Any vacancy in the office of treasurer shall be filled by the board of education by appointment; such appointee shall not be a member of said board. The treasurer shall execute a bond in such sum as that body may require with sufficient sureties to be approved by the board, conditioned for the faithful discharge of his duties as treasurer of such board. He shall prepare and submit in writing a monthly report of the state of the finances of the corporation, and shall when required produce at any meeting of the board all books and papers pertaining to his office. He shall pay money only upon a warrant signed by the president, or in his absence the vice-president, and countersigned by the clerk.

2540. Taxable property. [Ch. 57, '97.] § 14. The taxable property of the whole corporation, including the territory attached for school purposes, shall be subject to taxation.

2541. Regular meetings. [Ch. 57, '97.] § 15. The regular meetings of the board of education shall be upon the last Friday of each month, but special meetings may be held from time to time as circumstances may demand.

2542. Report of clerk. [Ch. 57, '97.] § 16. The clerk of the board of education at the close of each school year shall make an annual report of the progress, prosperity and condition, financial as well as educational, of all the schools of the corporation, a copy of which shall be sent to the county superintendent. Said report or such portion of it as the board of education shall consider advantageous to the public shall be printed in a public newspaper or in pamphlet form.

2543. Contracts. [Ch. 57, '97.] § 17. No expenditures involving an amount greater than one hundred dollars shall be made except in accordance with the provisions of a written contract, and no contract involving an expenditure of more than five hundred dollars for the purpose of erecting any public buildings or making any improvements shall be made except upon sealed proposals and to the lowest responsible bidder.

2544. May read bible. [Ch. 57, '97.] § 18. No sectarian doctrine shall be taught or inculcated in any of the schools of the corporation; but the bible without sectarian comment may be read therein.

2545. Bonds, how issued. [Ch. 57, '97.] § 19. Whenever it shall become necessary in order to raise sufficient funds for the purchase of a school site or sites, to erect suitable building or buildings thereon, or to fund a bonded indebtedness, it shall be lawful for the board of education of every corporation coming under the provisions of this act to borrow money, for which they are hereby authorized and empowered to issue bonds bearing a rate of interest not exceeding seven per centum per annum, payable annually or semi-annually, at such place as may be mentioned upon the face of said bond, which bonds shall be payable in not more than twenty years from their date; and the board of education is hereby authorized and empowered to sell such bonds at not less than par; provided, that no bonds shall be issued until the question shall be submitted to the people and a majority of the qualified electors who shall vote on the question at an election called for that purpose shall have declared by their votes in favor of issuing such bonds.

2546. Bond election. [Ch. 57, '97.] § 20. It shall be the duty of the mayor of such city or town upon request of the board of educa-

tion, to call an election to be conducted in all respects as are the elections for city or town officers, in the same corporations (except that the returns shall be made to the board of education), for the purpose of taking the sense of such corporation upon the question of issuing such bonds, naming in the proclamation of such election the amount of bonds asked for and the purpose for which they are to be issued; provided, that where the incorporation is not organized for civil government, the board of education may call and conduct the election provided for in this section.

2547. Signatures — limitations. [Ch. 57, '99; ch. 57, '97.] § 21. The bonds, the issuing of which is provided for in the foregoing section, shall be signed by the president, attested by the clerk, and countersigned by the treasurer of the board of education, and said bonds shall specify the rate of interest, and the time when the principal and interest shall be paid, and each bond so issued shall be for a sum not less than fifty (50) dollars, but no corporation shall issue bonds in pursuance of this act in any sum greater than four per cent of its assessed valuation.

2548. Bond interest. [Ch. 57, '97.] § 22. The board of education at the time of its annual levy of taxes for the support of schools as herein provided, shall also levy a sufficient amount to pay the interest as the same accrues on all bonds issued under the provisions of this chapter, and also to create a sinking fund for the redemption of said bonds which it shall levy and collect in addition to the rate per centum authorized by the provisions aforesaid for school purposes, and said amount of funds when paid into the treasury shall be and remain a specific fund for said purpose only and shall not be appropriated in any other way except as hereinafter provided.

2549. Sinking fund. [Ch. 57, '97.] § 23. All moneys raised for the purpose of creating a sinking fund for the final redemption of all bonds issued under the provisions of this chapter shall be invested annually by the board of education in bonds of the state of South Dakota or of the United States, or the board may buy and cancel the bonds of the district whenever such may be purchased at or below par.

2550. Payment of interest. [Ch. 57, '97.] § 24. Whenever the interest coupons of the bonds hereinbefore authorized shall become due they shall be promptly paid by the treasurer, upon presentation, out of money in his hands collected for that purpose, and he shall indorse upon the face of such coupons in red ink the word "paid" and the date of payment, and sign the initials of his name.

2551. Payment pledged. [Ch. 57, '97.] § 25. The school fund and property of such civil corporation and territory attached for school pur-

poses is hereby pledged to the payment of the principal and interest of the bonds mentioned in this chapter as the same may become due.

2552. Bond and warrant register. [Ch. 57, '97.] § 26. It shall be the duty of the clerk of the board of education to register in a book provided for that purpose the bonds issued under the provisions of this chapter, and all warrants issued by the board, which registration shall show the number, date and amount of said bonds and warrants and to whom made payable.

2553. Official oath and bond. [Ch. 57, '97.] § 27. Each member of the board of education and officer provided for in this chapter shall take and subscribe an oath or affirmation to support the constitution of the United States, the state of South Dakota, and faithfully to perform the duties of his office. The oath and bond of the clerk shall be filed with the treasurer. All other oaths and bonds shall be filed with the clerk, but the clerk shall immediately notify the county auditor and county superintendent of the filing of such oath and bond.

2554. Examination of teachers. [Ch. 57, '97.] § 28. The county superintendent, together with the principal or superintendent of schools of all independent districts employing such officer and in such independent districts as do not employ such an officer, the county superintendent alone, shall examine all teachers employed to teach in the schools of any city, town or other independent district, the same as other teachers of the county are examined except as hereinafter provided. In no case shall any teacher be employed to teach in such schools who does not hold a certificate issued as above provided, or a state certificate or a state diploma, and any contract made contrary to the above is hereby declared void. The above section shall be construed as giving the superintendent of schools of any city or town advisory power in the examination of teachers for his school, and he may add such questions as he may deem wise to use in the examination in order to test the qualifications of teachers for any particular grade or special work. The board of education in cities of the first class at such time as they shall deem expedient, shall elect a superintendent of schools, in no case a member of their own body, whose duty it shall be to have a general supervision of the schools of the corporation, subject to the rules and regulations of the board, who shall hold his office during the pleasure of the board and shall receive such compensation as the board may allow. The board shall also appoint two competent persons, who with the superintendent as chairman shall be styled the examining committee of the board of education, whose duty it shall be to examine all persons who may apply to them as teachers; and no person except one who holds a state certificate or state diploma shall be elected by the board as teacher

who cannot produce a certificate from the examining committee signed by all or a majority of them, and setting forth that the holder is competent to teach in such departments of the public schools as may be stated in the certificate and is a person of good moral character; provided, no teacher who holds a certificate issued under this section is excused from the county institute; provided, further, that the city superintendent shall have power to revoke the certificates, issued by the examining committee of which he is chairman, of those persons who do not attend the county institute.

2555. Ballot-boxes to be provided. [Ch. 57, '97.] § 29. For the purpose of the election provided for in this act, there shall be provided at each polling place a ballot-box separate and distinct from the ballot-box used for the city election, in which shall be deposited all ballots cast by the voters at such school election. The polling places shall be so arranged as to permit all persons entitled to vote at such school election free access to the same for the purpose of voting.

2556. Error in tax-list. [Ch. 57, '97.] § 30. Whenever an error occurs in any school corporation or district tax list, the board of county commissioners may correct and refund such improper collection of school taxes the same as for other county taxes.

ARTICLE 11. UNIFORM TEXT BOOKS.

2557. County board of education. [Ch. 59, '97.] § 1. The county superintendents of schools, the president of the board of education of all cities or towns, the county auditor, the county state's attorney, the board of county commissioners, their successors in office and one person from each commissioner's district who shall be selected by the members of the school boards of such commissioner's district present at a meeting to be called by the county superintendent, shall constitute the county board of education of each county in this state for the purpose of selecting and adopting all the text books needed for use in the public schools of the county. The county superintendent of schools shall, in all cases, be chairman of the county board of education, and the county auditor, secretary and a majority of said board shall constitute a quorum for the transaction of business.

2558. Meetings. [Ch. 59, '97.] § 2. The county board of education shall meet at the office of the county superintendent of schools of each county in the state on the second Tuesday of June, eighteen hundred and ninety-seven, and every five years thereafter and select and adopt a complete series of school text books to be used in all the schools

of the county; provided, that nothing in this act shall be construed to prevent any county board of education from selecting a series of text books from two or more publishers; provided further, that the boards of education in cities and towns may adopt additional books by the same or other authors for higher classes in their schools. The county board of education shall, immediately upon the taking effect of this act, advertise for twenty days in a newspaper published in each county, that at a time and place named in said notice, said board will receive sealed bids for furnishing school books to the pupils of all public schools in the county as provided in this act, for a term of five years, provided that no book shall be accepted on contract by the board of education in excess of the following prices, to wit: Graded speller, fifteen cents; first reader, ten cents; second reader, twenty cents; third reader, thirty cents; fourth reader, forty cents; highest reader, ninety cents; elementary geography, fifty cents; advanced geography, seventy-five cents; primary arithmetic, twenty-five cents; intermediate arithmetic, twenty-five cents; complete arithmetic, fifty cents; physiology and hygiene, fifty cents; history of the United States, eighty cents. Other necessary books shall be purchased and contracted for at proportionate prices with this list.

2559. Duties. [Ch. 59, '97.] § 3. Before selecting and adopting school text books in accordance with the provisions of this act, it shall be the duty of the said county board of education to take into consideration the books used in the county, and all books submitted by publishers and most carefully consider the price, the type, the material, the binding and other items that go to make up a desirable text book, and no text book shall be adopted whose price is above the contract or wholesale price at which said books were furnished to any other state, county or school corporation in the United States during the year previous to such adoption. The county superintendents shall annually at the close of the year make a report to the county board of education as to the operation of the school book contract.

2560. Notice of meeting. [Ch. 59, '97.] § 4. The county superintendent shall notify each member of the county board of education in writing of the time and place of meeting, at least ten days before the date of said meeting, and he shall prepare and furnish such information as shall assist the board in acting for the best interest of the people.

2561. Contract for books. [Ch. 59, '97.] § 5. The board of county commissioners shall contract with the publishers of such books as have been adopted by the county board of education, designating the price at which such books shall be furnished to them or their authorized agents, and they shall designate a depository for each school corporation in the county where books shall be sold to the pupils at not more

than ten per centum above cost, and they may pay for the books and transportation of the same, so contracted for, out of the general fund, on warrants signed by the county auditor and countersigned by the chairman of the board of county commissioners; provided, that the same depository may be designated for one or more school corporations.

2562. Contract contain what. [Ch. 59, '97.] § 6. The following shall constitute a part of every contract with publishers as provided in this act, whether contained in such contract or not: Whenever the state of South Dakota shall have published a sufficient number of any text books used in the public schools of the state, to supply the schools of any county in the state, upon notice being given by the governor to the county auditor of any county this contract shall be void as far as it relates to such book and the county auditor shall immediately notify the publisher holding such contract. The county commissioners of such county shall forthwith supply all the schools of said county with the books printed by the state. The auditor of said county shall on or before the tenth of each calendar month send moneys for all state's books sold, to the state treasurer, together with such report as the governor of the state may direct.

2563. Bond of depository. [Ch. 59, '97.] § 7. The board of county commissioners may require a good and sufficient bond from each depository designated by them as their agent, and such agent shall be required to file a statement with the county auditor on or before the tenth day of each calendar month showing the number and kinds of books sold by him, and the number and kinds of books on hand in such depository on the last day of the preceding month, and all moneys due the county by such depository shall be paid into the county treasury at the time of filing such statement. The county auditor shall supply each depository with proper blanks for making such report.

2564. Printed list of books. [Ch. 59, '97.] § 8. The county board of education shall furnish a printed list of books adopted, designating the retail price of each, and supply one or more copies of each school corporation and to each depository designated. The secretary or clerk of each school corporation shall post said price list in each school room under his supervision.

2565. Free school books. [Ch. 59, '97.] § 9. Upon a written petition of the majority of the electors of any school corporation, asking that the school books be furnished free to the pupils, it shall be the duty of said board to arrange and furnish the free use of books to the pupils of such corporation under such rules and regulations as said school board may determine.

2566. Books property of district. [Ch. 59, '97.] § 10. Said school board must procure a safe book case in which said books shall be kept, whenever it shall have been decided to supply its school books direct to the pupils and a careful invoice must be reported at the close of each term by the secretary. The books shall remain the property of the school corporation and can only be used on order of the board.

2567. Books not to be changed. [Ch. 59, '97.] § 11. Books once adopted or contracted for under the provisions of this act shall not be changed for a period of five years, except as hereafter provided and on request of at least two-thirds of the School boards of the county.

2568. Influence prohibited. [Ch. 59, '97.] § 12. No school teacher, county or city superintendent or member of any county board of education within the state of South Dakota shall be allowed to receive any emolument, cash or otherwise from any publisher or publishers of school books in payment for a vote or promise to vote or use their influence for any book or books to be used in the schools under their charge. Neither shall any agent or other person be allowed to give or offer any emoluments as heretofore described nor any promise of work nor other inducement to any teacher, county or city superintendent or member of any county board of education or other board of education for any vote or promise to vote or to use their influence for any book or books to be used in the schools under their charge; provided, that nothing in this section shall be construed to prevent any school official from receiving a reasonable number of sample copies for investigation, with a view to obtaining information as to the book or series of books for which such official shall cast his vote; provided further, that nothing in this section shall be construed to prevent any teacher from obtaining employment from any publishing house, in schools not under their direct charge. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor.

BONDS OF INDEPENDENT DISTRICTS.

2569. Bonds — purposes issued — amount limited. [Ch. 29, '93.] § 1. Any independent school district heretofore created and organized under a special act is hereby authorized and empowered to issue bonds for the purpose of building, enlarging or furnishing school houses, or for purchasing grounds on which to locate the same, in any amount,

not exceeding five per centum of the assessed valuation of the property in the independent district, in such manner as is now provided for the issuance of bonds for like purposes under the provisions of the general school law; provided, however, that in no case shall the outstanding indebtedness together with the bonds so issued exceed five per centum of the assessed valuation of the property in said independent district.

2570. Free tuition to soldiers and sailors. [Ch. 79, '99.] § 1. That all persons and the orphans of such persons residing in this state, who served sixty days or more, in the army or navy of the United States during out late war against Spain, and who have been honorably discharged from such service, shall be admitted to attend any state educational institutions of this state during good behavior, and shall be required to pay no tuition for such privilege; Provided, they shall be subject to the rules and requirements governing such schools as they may desire to attend.

CHAPTER 18. THE MILITARY CODE.

ARTICLE 1. ORGANIZATION OF THE MILITIA.

2571. Who compose militia. All able-bodied male citizens, residents of this state, being eighteen years of age and under the age of forty-five years, excepting persons exempt by law, shall be enrolled in the militia and perform military duty in such manner, not incompatible with the constitution and laws of the United States, as hereinafter prescribed. [C. L. 1917.]

2572. Assessor to make list. [Ch. 117, '93.] The several county, township, city, village and town assessors shall when making the annual assessment, make a list of all the inhabitants of their respective assessment districts liable to perform military duty and file such list in duplicate with the county auditor with the assessment roll, and one copy of the same shall be sent to the adjutant general. [C. L. 1918.]

2573. When and how called into service. The militia thus enrolled shall be subject to perform no active military duty, save and except in case of war, invasion, or to prevent invasion, riot or insurrection. In such case the commander-in-chief is hereby authorized to order out from time to time for actual service as many of the militia thus enrolled as necessity may require, and to provide for their organization in the manner hereinafter prescribed for the organization of volunteer militia; provided, that in all such cases the organized volunteer militia shall first be ordered into service. The militia while in active service shall be governed by the military law of the state, and the rules and articles of war of the United States; and when any troops are in the field for the purposes aforesaid in this section, the senior ranking officer of the troops present shall take command; provided, that no person shall be eligible to a command in the militia of this state except citizens of the United States or persons having declared their intention to become such. [C. L. 1919.]

2574. Name — officers. [Ch. 117, '93.] The organized militia of the state shall be known as the South Dakota national guard, and shall consist of not less than one battery of artillery, one troop of cavalry and one regiment of infantry of not less than two nor more than four battalions. The governor may in his discretion organize two regiments of infantry. The governor may in his discretion organize the South Dakota national guard into a brigade, in which case he shall appoint a brigadier general to command the same. The staff of the

brigadier general commanding shall consist of one assistant adjutant general, one assistant inspector general, one quartermaster, one engineer and ordnance officer, and one medical director, who shall be officers of the general staff, and two aides-de-camp, who shall be selected by the brigadier general from the company, troop or battery officers of the national guard, and vacancies therein shall be filled in such manner as is or may be prescribed by law. There shall also be attached to the brigade staff such non-commissioned staff officers as the brigade commander may require for proper administration. [C. L. 1920.]

2575. Commander-in-chief. [Ch. 117, '93.] The governor of the state of South Dakota shall be commander-in-chief of the national guard. The general staff shall consist of an adjutant general's department, an inspector general's department, a quartermaster general's department, an engineer and ordnance department, and a medical department with such staff officers as may be necessary. The officers at the head of the several departments of the staff shall be appointed by the commander-in-chief. He may also appoint not exceeding ten aides-de-camp who shall have the rank of colonel, also one judge advocate and one military secretary who shall rank as major. The terms of office of all general and staff officers shall be two years or during the pleasure of the commander-in-chief. The commander-in-chief may divide the state into regiment or battalion districts. The division shall be in such manner as to give all portions of the state so far as practicable a just proportion of the whole number of companies permitted by the military code; provided, that whenever the title "chief of supply" occurs in the military code there shall be substituted the title "quartermaster general" and in like manner for the title "commissary of supply" the title quartermaster shall be substituted, and in like manner where the title "sergeant of supply" the title "quartermaster sergeant" shall be substituted, and in like manner for the title "hospital sergeant" "hospital steward" shall be substituted. [C. L. 1921.]

2576. Commission. [Ch. 117, '93.] All appointees, except the adjutant general, aides-de-camp to the governor, and medical officers, shall be taken from the active members of the national guard. All commissions to officers of the national guard shall be issued by the governor and countersigned by the adjutant general, and all commissions so issued shall continue during good behavior or during the pleasure of the governor as provided by law; provided, that no officers of companies shall be commissioned by the commander-in-chief without the certificate of the inspector general of their fitness and qualifications for such commission after a full and fair examination. All officers whose duties require them to have charge of any military stores belonging to

the state shall give good and sufficient bond for the faithful accounting for the same to be approved by the governor. [C. L. 1922.]

2577. Troops equipped and organized. The troops of the line that may be uniformed and equipped may at the discretion of the governor be organized into a brigade under the command of the brigadier general or senior officer, but the commander-in-chief shall have power to change the brigade organization, and in case of riot, invasion or other imminent danger beyond the control of the civil authorities, to increase the numerical strength of existing organizations, or form new brigades, regiments and companies, as the exigencies of the service may require. [C. L. 1923.]

2578. Artillery battery consist of what. The battalion of artillery shall consist of two batteries of two guns each, one major, one assistant surgeon with the rank of captain, one adjutant and one commissary of supply, each with the rank of first lieutenant, one sergeant major, one sergeant of supply, one hospital sergeant and one chief trumpeter; provided, that two batteries are organized. [C. L. 1924.]

2579. Battery of artillery. Each battery of artillery shall consist of two guns with one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, four corporals, two musicians, two teamsters, and not less than twenty nor more than forty privates, except as the commander-in-chief may direct; provided, that two troops are organized. [C. L. 1925.]

2580. Cavalry battalion. The battalion of cavalry shall consist of two troops, one major, one assistant surgeon with rank of captain, one adjutant and one commissary of supply, each with rank of first lieutenant, one sergeant major, one hospital sergeant and one chief trumpeter. [C. L. 1926.]

2581. Cavalry troops. Each troop of cavalry shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, four corporals, two musicians, one farrier, one saddler, two teamsters, and not less than twenty nor more than forty privates, except as the commander-in-chief may direct. [C. L. 1927.]

2582. Infantry regiments. [Ch. 117, '93.] Each regiment of infantry shall consist of not more than four battalions of four companies each, one colonel, one lieutenant colonel, one surgeon with the rank of major, one adjutant, one quartermaster and one chaplain, each with the rank of captain, one sergeant major, one quartermaster sergeant, one chief bugler, one drum major, two color sergeants and not more than twenty musicians. Each battalion of infantry shall consist of not to exceed four companies, one major, one battalion adjutant, one

assistant quartermaster, one assistant surgeon, each with the rank of first lieutenant, one sergeant major, one quartermaster sergeant, one hospital steward, one battalion bugler and one color sergeant. The regimental and battalion commanders shall appoint their commissioned and non-commissioned staff from the members of the national guard, except medical appointees, who shall be graduates from some reputable school of medicine. All appointments to the rank of field officers of the regiment and battalion shall be made by the governor, and all appointments shall be made in the regular order, that is to say, the next senior officer shall be appointed to fill the vacancy; provided, however, any senior officer may waive his right, in which case the next in rank shall be appointed to fill the vacancy. Company, troop and battery commissioned officers shall be elected by the members of their respective company, troop and battery. The term of office of all officers mentioned in this section shall continue five years from the date of their respective commissions, whether issued before or after the passage of this act, or during the pleasure of the governor, and until their successors are elected or appointed. [C. L. 1928.]

2583. Infantry company, what to consist of. [Ch. 117, '93.] Each company of infantry shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, eight corporals, two musicians and not less than thirty-two nor more than sixty-four privates. [C. L. 1929.]

2584. Number of regiments in the national guard. [Ch. 111, '90.] § 3. The number of regiments of infantry in the South Dakota national guard shall not exceed one except in case of war or some emergency requiring an increase in the number.

2585. Discharged or consolidated, when. Whenever any troop, battery or company shall have less than the minimum number of privates fixed for each organization, the commander-in-chief may at his discretion discharge or consolidate such organizations; and all officers and men honorably discharged under the provisions of this section shall have given them a certificate of discharge showing length of service, which time shall be credited to them in case of re-entering the service. [C. L. 1930.]

2586. Who may enlist in national guard. [Ch. 117, '93.] Able-bodied men of good character and proper age, may be enlisted in the national guard for the term of three years and after the expiration of the first enlistment they may re-enlist at any time thereafter for the term of one or more years at their option. Non-commissioned officers,

musicians and privates who have served faithfully for one term of enlistment, will wear as a mark of distinction upon both sleeves of the uniform coat, below the elbow, a diagonal half chevron one-half inch wide, extending from seam to seam, the front end on the inside seam and extending back one-half inch above the point of the cuff, to a point half way between the elbow and the cuff, to be of the same color as the facings of the coat; in like manner an additional half chevron one-fourth of an inch above and parallel to the first for every subsequent term of enlistment and faithful service. [C. L. 1931.]

2587. Entitled to discharge, when. Every officer and enlisted man shall be held as in the service until properly discharged; and every enlisted man shall be entitled to and receive his discharge and certificate of service on the expiration of his term of enlistment from his immediate commanding officer. [C. L. 1932.]

2588. Transferred, when — discharged, when. Officers and men moving from one location to another in the state may be transferred from one organization to another on application to the adjutant general, approved by their respective commanding officers. Any member of the guard moving permanently out of the state or the vicinity of the station of the organization to which he belongs may be discharged and certificate of service furnished upon his own application, but any member of the national guard who may move away from the vicinity of his company or other permanent headquarters, or absent himself from all duty for six months, shall, unless proper explanation is accepted by his immediate commanding officer, be dropped from the rolls without discharge or certificate of service. [C. L. 1933.]

'2589. Adjutant general's department. [Ch. 117, '93.] There shall be one adjutant general with the rank of brigadier general, and such assistant adjutant generals with the rank of colonel, as the commander-in-chief on recommendation of the adjutant general shall direct, not to exceed two in number as the exigencies of the service may require. The adjutant general shall be appointed by the governor, and shall hold his office for the term of two years and until his successor is appointed and qualified, unless sooner removed for misconduct or in case of the vacation of his office by resignation duly accepted. He shall distribute all orders from the commander-in-chief. He shall be the organ of all written communication from the national guard to the commander-in-chief and shall attend him when required at review of the national guard, or whenever ordered in the performance of military duty. He shall lay before the commander-in-chief all recommendations of the heads of military departments, and obey or issue such orders as the commander-in-chief shall give in relation thereto,

and in all other military matters, and shall be entitled to use the coat of arms of the state as the seal of his office, with the words added thereto, "State of South Dakota, Adjutant General's Office." He shall submit to the commander-in-chief copies of all charges properly preferred in writing against any officer or soldier of the national guard, whenever desired by the person preferring such charge, as well as the proceedings of all general courts-martial. He shall annually make a return in triplicate of all the national guard of the state, a copy of which he shall deliver to the commander-in-chief on or before the first day of December in each year, one copy to be transmitted to the adjutant general of the United States army, and one copy shall be filed in his office. [C. L. 1934.]

2590. Officers required to pass an examination. [Ch. 111, '90.] § 4. All officers of the South Dakota national guard shall hereafter before being commissioned by the governor be required to pass a satisfactory examination before a board of examiners, as to their qualifications and fitness to fill the position to which they may have been elected or appointed.

In the cases of officers of the line such examination shall be as to their proficiency in the tactics of the United States army, relating to the school of the soldier and of the company, also as to their knowledge of the military law of South Dakota.

In the cases of field officers they shall in addition to the above requirements pass a satisfactory examination as to their proficiency in the school of the battalion and a general knowledge of military usages.

In cases of examination of line officers the board of examiners shall consist of the field officers of the regiment, and in cases of examination of field officers the board of examiners shall be appointed by the governor, who shall also prescribe such rules as to time, manner and place as he shall see fit. A certificate from a board of examiners shall be sufficient evidence as to his fitness and proficiency, in case of an officer applying for a commission from the governor; provided, that such examination shall not be deemed necessary in cases of officers appointed on the staff of the commander-in-chief or on the regimental staff.

2591. Armory to be used as a band room. [Ch. 111, '90.] § 7. In cases where a company and a regimental band are stationed in the same city or village, the armory of such company shall be used as a band room for the use of the regimental band and at no extra expense to the state.

2592. Offices abolished. [Ch. 100, '97.] § 1. That the offices of inspector general, assistant inspector general, quartermaster general, as-

sistant quartermaster general and chief of ordnance of the South Dakota national guard are hereby abolished.

2593. Duties. [Ch. 100, '97.] § 2. The duties heretofore devolved upon the above-named officers shall be performed by the judgment general and the officers of his department.

2594. Bond of adjutant general. [Ch. 100, '97.] § 3. The adjutant general shall give the bond heretofore required of the quartermaster general and may require a bond in such sum as he shall deem sufficient of any officer having charge of supplies.

2595. Military secretary. [Ch. 98, '97.] § 1. That the officer of the United States army detailed by the secretary of war for duty with the national guard shall be known as the military secretary to the governor and shall have the rank of colonel in the national guard.

2596. Expenses. [Ch. 98, '97.] § 2. That the expenses of the military secretary in executing the orders of the governor and commander-in-chief be defrayed out of any moneys appropriated, or hereafter to be appropriated, for the support of the national guard.

2597. Disposition of funds. [Ch. 99, '97.] § 1. That all moneys accrued or hereafter accruing from the sale of condemned stores or other state property pertaining to the national guard shall be covered into the treasury and credited to the fund for contingent expenses of the national guard when called out, or for any other purpose, promoting the efficiency of the national guard.

2598. Duties of adjutant general. The adjutant general shall keep a register of all the officers and enlisted men of the military forces of the state; he shall make a full report on or before the first day of December in each year to the commander-in-chief upon the condition of the national guard, and a detailed statement of all duty performed by them during the preceding year; he shall publish from time to time as may be necessary, at the expense of the state, all laws, rules, regulations and orders relating to the military forces thereof, and distribute one copy to each commissioned officer and organization of the national guard, and to such officers of the state as may be affected thereby; he shall cause to be prepared and issue all blanks, books, forms and notices required for his office, or for the use of the national guard, and all books and forms so furnished shall be the property of the state. The established seal of the office shall be transferred to his successor in office,

and all copies of papers or records in his office, duly certified and authenticated under the said seal, shall be evidence in all cases in like manner as if the originals were produced. And on the certificate of the adjutant general the auditor is hereby directed to draw his warrant on the treasurer of the state, to be paid from the general fund, for the expenses incurred in carrying out the provisions of this section. [C. L. 1935.]

2599. Bureau of pensions. The adjutant general shall, in addition to his other duties, organize and conduct a "bureau of pensions" for the purpose of assisting ex-soldiers or sailors, residents of the state, who may apply for pensions for wounds or disability incurred in the service of the United States, in establishing their claims, without fee or commissions. The salary of the adjutant general shall be fifteen hundred dollars annually, which, with the necessary expenses incurred in conducting the bureau of pensions, office, and clerk hire, furniture, fuel, lights, postage and stationery not to exceed two hundred and fifty dollars per annum, shall be paid from the militia fund by warrant drawn by the auditor on the treasurer of the state on the order of the governor. [C. L. 1936.]

2600. Inspector general's department, duties of. [Ch. 117, '93.] There shall be one inspector general with the rank of brigadier general, and such assistants, with the rank of colonel as the governor shall direct, on recommendation of the inspector general, not exceeding two in number. The inspector general shall be appointed in the same manner as the adjutant general and shall hold his office for the term of two years, and until his successor is appointed and qualified, unless sooner removed for misconduct, or in case of the vacation of his office by resignation duly accepted. He shall have the charge and supervision of the drill, and instruction of the South Dakota national guard, and shall once each year at such time as the commander-in-chief shall direct, inspect all companies of the South Dakota national guard, and make a detailed report of the number and condition of all articles of the state property, proficiency in drill, and the general military knowledge of the officers and men, also the condition of the companies' correspondence, returns, records, orders and the condition of the company generally. The commander-in-chief may from time to time require the inspector general to examine any armory, arms or state military property and report to him the condition thereof. If it shall appear satisfactory to the inspector general that any arms, ordnance or other state property already distributed to any company has not been safely kept, or properly housed, or has been injured, or loaned or used for other purposes than military occasions, he shall prosecute the bond

given by the commanding officer of such company, or he shall take away such property from such company and report such company to the commander-in-chief who shall disband the same at his discretion. For this purpose the inspector general may inspect or cause to be inspected or examined at any time at his discretion the arms and property aforesaid. [C. L. 1937.]

2601. Quartermaster general's department. [Ch. 117, '93.] The quartermaster general's department shall consist of the quartermaster general, with the rank of brigadier general and two assistant quartermasters with the rank of colonel. The quartermaster general shall be appointed in the same manner as the adjutant general and inspector general, and shall hold his office for the term of two years and until his successor is appointed and qualified, unless sooner removed for misconduct, or in case of vacation of his office by resignation duly accepted. The terms of office of the assistants of the adjutant general and quartermaster general and inspector general shall terminate with the terms of office of their respective chiefs [C. L. 1938.]

2602. Quartermaster general to give bond. [Ch. 117, '93.] The quartermaster general shall give a bond to the state in the sum of ten thousand dollars (10,000) in the usual form with two sureties, each in the amount of the bond, to be approved by the commander-in-chief, for the faithful discharge of his duties. He shall keep a just and true account of all expenses necessarily incurred for the military services of the state and said accounts shall be paid on the order and approval of the commander-in-chief. He shall purchase and distribute to the national guards all military stores and supplies authorized by law, shall pay all incidental expenses of the service, including transportation, freight, express, postage and telegrams on public business; shall pay the officers and members of the national guard; shall furnish clothing, rations and tools, camp and garrison equipage, make contracts for and pay the rent of offices, armories, storehouses, camp grounds and such other duties authorized by law, as may be directed by the commander-in-chief. [C. L. 1939.]

2603. Engineer and ordnance department. The engineer and ordnance department shall consist of one chief of engineers and ordnance with rank of colonel, and one assistant with the rank of major. [C. L. 1940.]

2604. Officers, duties of. It shall be the duty of the officers of this department to receive arms, ammunition and equipments from the chief of supply, and distribute the same to the troops when required by him so to do; inspect buildings in quarters, to lay out camp; be inspector of

rifle practice and to perform such other services as the commander-in-chief may direct. [C. L. 1941.]

2605. Medical department. The medical department shall consist of one surgeon general with the rank of colonel, one medical purveyor with rank of lieutenant colonel, and one apothecary and storekeeper with rank of captain; but no person shall be appointed to this department or commissioned to similar duties in this line unless he shall be a graduate of some legally incorporated school of medicine. [C. L. 1942.]

2606. Duties of medical officers. It shall be the duty of these officers, assisted by the medical officers of the line, to provide the necessary medical supplies and care for the sick and wounded of the national guard when on duty, and to perform such other service as the commander-in-chief may direct. [C. L. 1943.]

2607. Offices to be filled by election. Every vacancy below the grade of field officer shall be filled by election, under such rules as the commander-in-chief may determine, and in case of no election he may appoint a suitable person to such office. The commander-in-chief shall decide all appeals in election cases under this section and order a new election in case he deem it necessary. [C. L. 1944.]

2608. Rank, how determined. The respective rank of all officers shall be determined by the date of their election or appointment and the length of time of service in the South Dakota national guard as a commissioned officer of such rank; provided, that in case of re-election or reappointment his rank shall be determined by date of first commission. [C. L. 1945.]

2609. Appointment of staff. Commanding officers of regiments or battalions shall detail their staff officers from the officers or enlisted men of their command, and appoint the non-commissioned officers of the organization by warrants. Staff officers so detailed will be dropped from the company rolls and the vacancy filled by promotion or appointment. [C. L. 1946.]

2610. Appointment of non-commissioned officers. Company, troop or battery commanders shall appoint non-commissioned officers of their commands, and forward the same to regimental or battalion headquarters, where a warrant shall be issued for the same, signed by the commanding officer. [C. L. 1947.]

2611. Oath of officers. Every officer before entering upon the duties of his office shall take and subscribe an oath of allegiance to the United States and the state of South Dakota, which oath duly executed shall be filed in the office of the adjutant general. [C. L. 1948.]

2612. Recruits to sign enlistment. Every person recruited for the national guard shall sign enlistment papers in triplicate, which shall contain an oath of allegiance to the United States and to the state of South Dakota, and a resume of the duties to be performed. Said oath of allegiance shall be taken before the troop, battery, company or battalion commanders, and when duly executed one copy shall be forwarded to the adjutant general's office, one copy to the headquarters of the regiment or battalion, and the other copy filed with the official records of the organization to which the recruit is assigned. [C. L. 1949.]

2613. May be discharged, when. Officers and enlisted men of the national guard may be discharged for physical or mental disability on the certificate of a surgeon, and under such rules and regulations as may be determined upon, but no honorable discharge shall be given any member of the national guard until he shall produce a certificate from his immediate commanding officer that he has returned or satisfactorily accounted for all the money or other property of the state or any organization of the national guard issued to him or coming into his possession; provided, no certificate of service shall include the time any member was absent from duty without leave, which time of absence shall in no case be allowed in computing length of service. [C. L. 1950.]

2614. Drill, discipline and uniform. The drill, discipline and uniform of the national guard shall be the same as that of the army of the United States; provided, that nothing in this section shall be so construed as to require companies now uniformed to supply new uniforms in the place of those now worn, until such time as it shall become necessary to provide a new uniform, which new uniform shall be the same as worn by the United States regular army. The regulations of the army, articles of war and acts of congress of the United States shall be authority and govern in all cases not provided for by the laws of the state or regulations and orders of the commander-in-chief. [C. L. 1951.]

2615. Military law to be codified. [Ch. 117, '93.] The governor shall as soon as practicable after the passage of this act appoint three officers of the South Dakota national guard to codify the laws in force for the government of the military forces of the state; also to formulate such rules and regulations necessary to carry out the provisions of the military code of the state of South Dakota, which codification and rules, when approved by the governor, shall be published to the South Dakota national guard and shall govern the same. The governor may, however, from time to time as he may deem expedient, change the rules and regulations, but such change shall in no way conflict with the pro-

visions of this law. (The laws, rules, regulations and orders published and issued in this manner shall have the same force and effect as the provisions of this act.) [C. L. 1952.]

ARTICLE 2. MILITARY DUTY REQUIRED.

2616. Annual encampment. There shall be an annual encampment, inspection and muster of all organizations of the national guard for at least six consecutive days, at such time and place as the commander-in-chief shall order and direct. No person shall be mustered at such time or allowed to appear as a part of the national guard unless he shall be duly commissioned or enlisted in the same, nor any member who does not appear uniformed, armed and equipped as required by the provisions of this act. Any officer who knowingly or wilfully shall place or caused to be placed on such muster roll the name of any person not regularly or lawfully commissioned or enlisted, or the name of any man who is dead, or has been discharged, transferred or dropped, or has lost his membership for any cause whatsoever, or one who has been convicted of a felony or has refused to do military duty for the six months immediately preceding the annual inspection, shall be deemed guilty of a misdemeanor, punishable by a fine of not less than fifty nor more than one hundred dollars, or he may be cashiered. [C. L. 1953.]

2617. What required each year. In addition to the annual muster and inspection, each troop, battery or company shall be obliged to perform during the year not less than five drills, parades, musters and inspections. There shall also be not less than six additional drills, at such times as the commanding officer may determine. Other exercises may be had as the members of such organization shall prescribe in their by-laws by resolution. Any officer or man absent from any compulsory drill or parade shall be fined or punished as fixed by the regulations. [C. L. 1954.]

2618. Powers of commanding officers. The commanding officer at any parade, drill, muster or other rendezvous may cause those under his command to perform any military duty he may require, and may place in arrest during the time of such meeting, and confine under guard if necessary, any officer or enlisted man who shall disobey the orders of his superior officer or in any way interrupt the exercises, and may remove any other person or persons who shall trespass on the parade ground or armory, or in any way interrupt the orderly discharge of duty of those under arms. He shall prohibit and prevent the sale or use of all spirituous liquors, wine, ale or beer within the limits of the encampment, parade grounds or armory, and such limits

shall be prescribed in orders by the officer commanding the parade or encampment, and also all hucksters, auction sales, gambling or games of chance may at his discretion be abated as nuisances. [C. L. 1955.]

2619. Target practice. To accustom the troops to the use of their arms, target practice must be encouraged. The commander-in-chief shall order such practice as the allowance of ammunition will permit, and he shall offer suitable medals, badges or trophies, to be inscribed and given in the name of the state to the persons and organizations who upon competition shall show their superior attainments as marksmen. The provisions of this section shall be carried out under orders and regulations issued by the commander-in-chief; provided, that not more than one hundred dollars shall be expended in any one year for the purchase of medals, badges or trophies. [C. L. 1956.]

ARTICLE 3. CALLING OUT THE MILITIA.

2620. Officers and men warned, how. [Ch. 117, '93.] For the purpose of warning the officers, non-commissioned officers and other enlisted men for any parade, encampment or place of rendezvous, the commanding officer shall issue his orders under his hand to such number of non-commissioned officers as he may deem necessary, requiring them respectively, to warn each and every person belonging to the organization to appear at the place of rendezvous in compliance with the order. Each non-commissioned officer to whom the order shall be directed, shall warn every person whom he shall therein be required to warn, by reading the orders or stating the substance thereof, in the hearing of such person, or by leaving a notice thereof at his usual place of abode or business, as appears by the roster, with some person of suitable age and discretion, or by sending the same to him by mail, directed to him at his residence or post-office nearest thereto. The return of service made by such non-commissioned officer, sworn to and certified, shall be good evidence on the trial of any person returned as delinquent. In case of riot, tumult, breaches of the peace and in aid of civil authorities, a verbal warning or order shall be sufficient. Every commissioned officer of a brigade, regiment, company, troop or battery, who shall neglect to appear at any brigade encampment or rendezvous, as provided by this section, shall forfeit and pay the sum of four dollars for each day or part of a day of such absence, and every non-commissioned officer, musician or private, shall in like manner forfeit and pay the sum of two dollars for every day or part of a day of such absence. Said amounts when collected shall be paid into the treasury of the organization to which the delinquent belongs. [C. L. 1957.]

2621. When excused. The officer ordering a rendezvous of his command may upon good and sufficient grounds excuse any member thereof from attendance at the same. [C. L. 1958.]

2622. Power of commander-in-chief in case of public disturbance. [Ch. 117, '93.] The commander-in-chief shall have the power in case of insurrection, invasion or breach of the peace, or immediate danger thereof, or when called on by the United States, for the whole or a part of the organized militia of this state for military service under the laws of the United States to order into active service of the state any and all the national guard, militia or other military organizations of the state that he may deem proper, and no member thereof who shall be ordered out by the proper authority for such duty, shall be held answerable by any court, nor liable to civil prosecution for any act or acts done by them in discharge of their lawful military duty on such occasions, and in such cases the forces called into service shall receive the same pay and allowance as provided by section nineteen hundred and seventy-two of this act. If any officer or soldier in the service of the state shall be wounded or disabled while in the discharge of his duty, he shall be taken care of and provided for at the expense of the state during the period of such disability. [C. L. 1959.]

2623. Sheriff or mayor may call out troops, when. In case of any breach of the peace, tumult, riot or resistance to process of this state, or such imminent danger thereof as will not admit of delay, it shall be lawful for any sheriff of any county or the mayor of any city to call, in writing under his hand and seal, for aid upon the commandant of the national guard stationed therein or nearest thereto, and it shall be the duty of such commanding officer upon whom the call is made to order out in aid of the civil authorities such portion of his command, armed and equipped, as may be necessary to overcome the resistance and vindicate the supremacy of law; and he shall immediately report to the commander-in-chief all that has been done and the circumstances of the case; and the forces called into service by such orders shall receive the same pay and allowances as provided in section nineteen hundred and seventy-two, and the amount of such pay and allowances shall be a portion of the county and city charges of said county or city from the state, to be levied and raised as other charges are levied and raised. [C. L. 1960.]

2624. When deemed a deserter. Any member of the national guard ordered into service under the provisions of the two preceding sections who does not appear at the time and place fixed by his commanding officer, or who does not produce a certificate from a physician in good

standing of physical disability, shall be deemed a deserter and punished according to the rules and articles of war. [C. L. 1961.]

ARTICLE 4. COURTS MARTIAL.

2625. Articles of war of United States adopted. The articles of war governing the army of the United States, so far as they are practicable and not incompatible herewith, are hereby adopted for the government of the national guard and militia of this state, with the following exceptions: The commander-in-chief is alone authorized to order general courts martial and courts of inquiry; battalion or other superior commanders may order garrison courts martial, which are authorized to try all offenders. The maximum number of members of these courts is fixed as follows: General courts, seven members; courts of inquiry and garrison courts martial, five members. Minimum number: General courts, five members; and courts of inquiry and garrison courts, three members each; as the exigencies of the service permit. [C. L. 1962.]

2626. Fines, how disposed of. Fines of offenders under the preceding section may be paid to the court or to the treasurer of the organization to which the offender or offenders belong. All fines imposed and collected shall be deposited to the credit of the clothing and equipment fund of the organization to which the member paying the fine belongs, or if a staff officer to the general fund of the state. A receipt for money so deposited will be forwarded for file with the proceedings of the court in such case. [C. L. 1963.]

2627. Compel attendance of witnesses. Any court authorized by this act shall have the same power as other courts of the state to compel the attendance of witnesses, through the senior officer or president of the court, and to administer oaths to such witnesses, who shall issue subpoenas for all witnesses that may be deemed necessary by the court. He may issue attachment for the witness, and all sheriffs, jailers and constables are hereby required to execute any precept issued by such president or court for that purpose. The person attached for non-attendance shall pay the usual fees for such service, besides the penalty provided, unless he satisfies the court that his failure to attend was excusable. Every witness not appearing in obedience to such subpoena when duly served with a copy of the same, and not having a sufficient excuse, shall forfeit to the people of this state a sum not less than one nor more than ten dollars, to be paid and credited as fines for similar offenses before other courts of the state. [C. L. 1964.]

2628. Punish for contempt. Any person or persons behaving in a disrespectful manner, or using any insulting language before any mili-

tary court, or to a member thereof in open court, intending to disturb or impair the authority of such court, may be punished for contempt of court by confinement in the jail of the county in which the court sits, by warrant under the hand of the president of such court. The warrant shall be directed to the sheriff or any or either of the constables or marshals of any such county, or the officer attending the court, and shall set forth the circumstances of the offense adjudged to have been committed, and shall command the officer to whom it is directed to take the body of such person and commit him to the jail of the county, there to remain without bail and in close confinement for a limited time, not to exceed three days, and until the officer's fees for committing and the jailer's fee be paid. Such sheriff shall obey the warrant and keep the person as directed, unless he is discharged by a judge of a court of record in same manner and under the same rule as in cases of imprisonment under process of contempt from a court of common-law jurisdiction. [C. L. 1965.]

2629. Sheriff of county is marshal of court. A military court sitting in any county shall be attended by the sheriff of the same, or some suitable person designated by him, who shall be the marshal of the court and perform the usual duties of such marshals, and execute any process lawfully issued by such court, and perform all acts and duties by this act imposed on and authorized to be performed by any sheriff, marshal or constable; and the officer ordering the court shall furnish a copy of his order to the sheriff of the county where the court is directed to meet, which order shall be notice to the sheriff to appear or designate some one as marshal of the court. [C. L. 1966.]

2630. Conversion, embezzlement — compensation of marshal. To every marshal appointed to a military court shall be paid two dollars for every day's attendance before the court, and actual necessary traveling expenses while engaged in serving subpoenas or executing any process of the court, the same to be paid on the certificate of the president of the court as to number of days employed and other duties performed, and in like manner with other accounts of the state, but no marshal shall receive any fees from the person served, and any refusal or neglect on the part of the sheriff or marshal to execute any warrant herein required, or make return and pay over all the money collected as fines, shall subject the officer so offending to double the amount of such fines and penalties. The conversion to his own use of moneys so collected by any sheriff or marshal shall be deemed embezzlement, and punished as such in any court of the state having jurisdiction of such cases. [C. L. 1967.]

2631. Fines, how collected. For the purpose of collecting fines imposed by courts martial, the president of the court shall within twenty days after the proceedings of the court have been approved, make a list of all the persons fined, describing them distinctly and showing the sums imposed on each person and not paid. He shall then draw his official warrant directed to the sheriff of the county or the marshal of the court, commanding him to levy such fine, together with the costs, on the goods and chattels of the delinquent, sale thereof to be made as provided by law, and no property shall be exempt from payment of such fines and penalties. In default of sufficient goods and chattels to satisfy the same, then such sheriff, marshal or constable shall take the body of such delinquent and confine him in the county jail, whose jailer shall keep such delinquent closely confined without bail or main-prize for two days for any fine or penalty not exceeding five dollars, and one additional day for every dollar above that sum, unless the fine with the costs and jailer's fees be sooner paid; but no such imprisonment shall extend beyond ten days, and the officer ordering the court may remit the fines and penalties imposed. [C. L. 1968.]

2632. In case of refusal to pay. Any member of the national guard fined by a general or other court martial, who shall neglect or refuse to pay such fine within twenty days after the same was imposed, may be published in orders by the officer ordering the court, and dishonorably dismissed from the service without allowance of time he has served, and disqualified from serving in the national guard for three years. For offenses against the by-laws, rules and regulations of any organization any dues may be collected by court martial as provided in this act. [C. L. 1969.]

2633. Action against members of military court. No action shall be maintained against any member of a military court on account of the imposition of a fine or penalty, or for the execution of a sentence on any person, if such person shall have been returned as delinquent and duly summoned before such court, or shall have appeared before such court to answer the charges made against him. [C. L. 1670.]

2634. Judgment against plaintiff — penalty. When a suit or proceedings shall be commenced in any court by any person against any officer of the national guard of this state for any act done by such officer in his official capacity in the discharge of any duty under this act, or against any person acting under authority or order of such officer, or by virtue of any warrant issued by him pursuant to law, the judge advocate general or some officer designated by the governor shall appear for him, and the plaintiff in such suit may be required to file security for the payment of the costs that may be incurred by the defendant in

such suit or proceedings. In case the plaintiff shall be non-suited or have verdict or judgment rendered against him, the defendant shall recover treble costs and such attorney's fees as the court shall allow, which said fees shall in the first instance be paid by the state and be refunded by defendant upon collection of the judgment. [C. L. 1971.]

ARTICLE 5. COMPENSATION.

2635. Compensation of officers and men. [Ch. 117, '93.] There shall be allowed and paid as hereafter provided, to such officers and enlisted men as shall be ordered into active service, or to attend annual encampments, in pursuance of the provisions of this act, the following sum each for every day actually on duty, or going to and returning from the same, and the certificate of the officer ordering the duty shall be evidence of such service. To musicians, privates and teamsters, one dollar; to corporals, farriers and saddlers, one dollar and twenty-five cents; to sergeants and drum majors, one dollar and fifty cents; to first sergeants, principal musicians, and chief trumpeters, one dollar and seventy-five cents; to sergeant major, quartermaster sergeant, hospital stewards and chief musicians, two dollars; to second lieutenants, two dollars and twenty-five cents; to first lieutenants, two dollars and fifty cents; to captains and company commanders, three dollars; to lieutenant colonels, majors and battalion commanders, three dollars and twenty-five cents; to colonels, three dollars and fifty cents; to brigadier generals, four dollars; to staff officers the same as officers of like grade in the line or field. The headquarters of each brigade, regiment and battalion shall be allowed annually the sum of twenty-five (25) dollars for postage and stationery. In like manner each company, troop and battery shall be allowed annually the sum of ten (10) dollars for postage and stationery. [C. L. 1972.]

2636. Members to provide horses — compensation. All members of the national guard that are required to be mounted shall provide for their own use a horse and horse equipments, but shall be allowed forage for the same when on duty, and be paid the sum of one dollar for each day such horse may be on duty in the service of the state, or as may be provided in this act. And the sums authorized by this section shall be paid by the chief of supply in such manner as the commander-in-chief may direct. [C. L. 1973.]

2637. Compensation of officers under orders. All officers detailed to serve on any board or commission ordered by the commander-in-chief, or on any court of inquiry, court martial or delinquency court ordered by the proper authority in pursuance of any provisions of this act, shall be paid their subsistence and actual traveling expenses, and for

each and every day actually employed in said board or court or engaged in the business thereof or in traveling to and from the place of meeting of said board or court, a sum equal to one day's pay for field duty. [C. L. 1974.]

2638. Compensation of officers and men on duty. All officers and enlisted men of the national guard while on duty in camp, or assembled pursuant to the order of the commander-in-chief or the sheriff of any county or the mayor of any city, shall receive the compensation provided in section nineteen hundred and seventy-two, and also their subsistence in kind or commutation thereof, and their transportation or mileage — the rates of commutation or mileage to be fixed by order of the commander-in-chief. [C. L. 1975.]

2639. Clothing and equipment fund. [Ch. 117, '93.] Every non-commissioned officer, musician and private of a company, troop or battery, duly organized under the military laws of the state of South Dakota shall be furnished with a uniform complete and the necessary insignia of rank at the expense of the state not exceeding in value twenty-five dollars each, and the said uniform shall be furnished by the quartermaster general upon requisition of the commanding officer of the company, troop or battery to which the non-commissioned officer, musician or private belongs, and approved by the major commanding. Said requisition shall be made in duplicate and shall certify the name, age, rank, the date of enlistment, term of service and measurement of the member or members for whom the uniform is required; also the number of state uniforms already in the possession of the company, troop or battery, and the number of active members on the roll. The non-commissioned staff of each regiment, brigade or battalion shall in like manner be provided with uniforms upon the requisition of the commanding officer of the regiment or battalion to which they are attached, provided that they have not been furnished with a uniform as members of a company, troop or battery. The uniform so furnished by the state shall conform in every respect to that worn by the United States army, except the button, which shall be that of the state. Every uniform so furnished shall continue to be the property of the state, and shall be deposited in the company armory and be in charge of the commanding officer of the company and is never to be worn except in the discharge of military duty. Every person who shall intentionally or through neglect injure or destroy such uniforms or other property of the state and refuse or neglect to make good such injury or loss, or shall sell or dispose of the same, shall upon conviction thereof be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not ex-

ceeding six months, or both such fine and imprisonment. Any person who shall wear or use, except in the discharge of military duty or by special permission of his commanding officer, any uniform or other military property belonging to the state, shall be punished by a fine not exceeding twenty dollars for each and every such offense. Uniforms furnished by the state are expected to last six years and shall not be replaced until condemned by the inspecting officer, and when condemned shall be disposed of under instructions from the secretary of war of the United States, or the inspector general under approval of the governor as the case may be. All commissioned officers of the South Dakota national guard shall provide themselves with such uniforms and arms complete as are required by the United States army regulations for officers of the United States army and shall be allowed ten dollars per year for the purchase of such uniforms and arms, to be paid from the state military fund. [C. L. 1976.]

2640. Transportation. The officers and members of the national guard shall be allowed free transportation for themselves, their horses and equipments and the property of the state, going to and returning from any service authorized or directed by law, their subsistence in kind or commutation therefor, and their quarters, tents and camp equipments; and the chief of supply and the officers of his department will at all times be prepared to furnish these things as may be required by orders of the commander-in-chief. [C. L. 1977.]

2641. Property exempt from taxation. All property belonging to any organization of the South Dakota national guard shall be exempt from taxation or assessment for any purpose whatever; and in case any such organization shall erect or purchase an armory or assembly room, the annual rent of the same authorized in section nineteen hundred and seventy-nine may be paid into the treasury of such organization. [C. L. 1978.]

2642. Armory rent: [Ch. 111, '90.] The commanding officer of each company, troop or battery, and the treasurer of each regimental band, shall provide suitable room or rooms at a convenient place in the town where each organization is located or stationed, with the necessary furniture, fuel, lights, drawers, lockers, closets and gun racks, for an armory, assembly and drill room for such organization, and said room or rooms shall be under the exclusive control of the commanding officer. There shall be paid out of the militia appropriation the sum of three hundred dollars (\$300.00), or as much thereof as shall be deemed necessary on the contract made by the chief of supply for the rent and furnishing

of such armory or band quarters of each organization of the national guard, to be paid by the state of South Dakota. There shall also be paid annually out of the militia fund to each regimental headquarters the sum of twenty-five dollars (\$25.00) for stationery, printing, postage and telegrams used in the state service; also annually to each company commander or commander of a battery of artillery or troop of cavalry the sum of ten dollars (\$10.00) for like purposes. [C. L. 1979.]

2643. Exempt from jury duty and poll tax. [Ch. 177, '93.] The commanding officers of every company, troop or battery duly organized and accepted by the governor into the service of the state, shall on demand deliver to each of his command a certificate showing the date of enlistment, term of service and that he is an active member of his command. Every member of the South Dakota national guard having such certificate of his proper commanding officer shall be exempt for the year such certificate is given from the payment of all poll tax and all jury duty. The possession of the certificate aforesaid by any member of the South Dakota national guard will be sufficient authority for all officers to exempt such members from the payment of poll tax or from service on any jury. Officers holding commissions from the governor in the South Dakota national guard shall be entitled to the same exemptions as provided for those holding certificates. Any person not a member of the South Dakota national guard who shall on or before the first day of July of each year pay into the treasury of any company, troop or battery the sum of ten (10) dollars, shall receive from the commanding officer of such company, troop or battery, a certificate showing that the person named therein has paid the sum of ten (10) dollars into the treasury of said organization, and shall be exempt during the ensuing year from the payment of all poll tax, and from all jury duty in the same manner as active members of the South Dakota national guard. The funds derived from the dues of contributing members shall be used for the benefit of the organization paid to and all property purchased with the same shall be deemed the property of the state; provided, however, any such certificate shall be void if transferred or in the hands of persons other than to whom issued; and provided, further, that exempt certificates shall not be valid in any county unless issued by the commanding officer of the company, troop or battery stationed in said county, but shall be in force in any county where no such organization exists. Every person, issuing, obtaining or using an exemption certificate as provided in this section improperly or unlawfully, shall upon conviction thereof be deemed guilty of a misdemeanor, and shall be punished as provided by law for misdemeanors; provided, however, that the number of such certificates issued

in each year by the commanding officer of any company, troop or battery shall not exceed one hundred and fifty; provided further, that the certificates to contributing members shall be issued by the adjutant general to the commanding officer of each company, troop or battery and shall be numbered consecutively, and shall be accounted for on the first day of June and December and at the time of the annual inspection each year; and, provided, further, that for the purposes named in this section time served in the Dakota national guard shall be counted the same as though served in the South Dakota national guard. [C. L. 1980.]

ARTICLE 6. MISCELLANEOUS PROVISIONS.

2644. Exemption from arrest on civil process. No persons belonging to the military forces shall be arrested on any civil process while going to, remaining at or returning from any place at which he may be required to attend for military duty. Any portion of the national guard performing any duty according to law, shall have the right of way in any street or highway through which they may pass; provided, the carriage of the United States mails, the legitimate functions of the police, and the progress and operations of fire engines and fire departments shall not be interfered with thereby. [C. L. 1981.]

2645. Officers to report, when. Every officer who receives arms, accoutrements, clothing, camp equipage, rations or stores of any kind for the use of his command, or for issue to troops, shall render the chief of the department furnishing the same a report or return of such supplies, according to the forms which may be prescribed, and such reports shall be furnished when called for, but not oftener than once in two months. [C. L. 1982.]

2646. Military supplies cannot be sold or given away. The clothing, arms, military outfits, accoutrements and stores furnished by the state to the national guard shall not be sold, bartered, exchanged, pledged, loaned or given away, and the possession of any such property by any person not a member of the guard shall be prima facie evidence of such sale, barter, exchange, pledge, loan or theft. Such property may be seized and taken from any person not authorized to keep the same, by any officer, soldier, civil or military, of the state, and shall thereupon be delivered unto any officer of the state authorized to receive the same. [C. L. 1983.]

2647. Lost or stolen property, how valued. All property of the state that may be lost, stolen, damaged or destroyed in the military service shall be acted upon by a disinterested inspector or officer detailed

as such, who shall make full investigation and report of all the facts and circumstances of the case, and if any person is found or deemed responsible for the loss or damage of the property beyond reasonable wear and tear of the service, the inspector shall assess and fix a reasonable value on the property lost, damaged or destroyed, and such person shall pay the sum so assessed into the treasury of the state. And in event of such person's failure or neglect to reimburse the state, suit may be entered in the name of the state in any court of competent jurisdiction for the recovery of the same under such regulations as the governor shall prescribe. [C. L. 1894.]

2648. Appropriations. For the purpose of carrying out the provisions of chapter thirty [revised codes of eighteen hundred and seventy-seven] of the political code of the state of South Dakota, as herein amended, there is hereby made an appropriation of fifteen thousand dollars per annum, or so much thereof as may be necessary, out of any money in the state treasury, and all warrants against said appropriation shall be drawn by the state auditor upon the state treasurer, upon the certificate of the adjutant general approved by the governor. For the purpose of carrying out the provisions of chapter thirty [revised codes of eighteen hundred and seventy-seven] of the political code of the Territory of Dakota, as herein amended, there is hereby appropriated annually, in addition to the amount heretofore appropriated, the sum of three thousand dollars, or so much thereof as may be necessary, out of any money in the state treasury not otherwise appropriated, and all warrants against said appropriation shall be drawn by the state auditor upon the state treasurer, upon the certificate of the adjutant general approved by the governor. [C. L. 1985.]

2649. Military code This act shall be known, entitled and referred to as the military code of the state of South Dakota. [C. L. 1986.]

SONS OF VETERANS.

2650. Duty of chief of supply. [Ch. 16, '93.] § 1. That the chief of supply of the state is hereby authorized to issue from time to time to the regularly organized camps of the military organization known as the Sons of Veterans United States of America, now or hereafter existing within the state, such military arms and accoutrements as may be in his control, belonging to the state, and not necessary for the arming and equipment of the national guard, upon such camps giving bonds as hereinafter provided, conditioned for the safe keeping of such arms and accoutrements and for the safe and prompt return thereof when called for by the chief of supply.

2651. Captain of camp to make requisition. [Ch. 16, '93.] § 2. Said arms and accoutrements shall be furnished only on requisitions from the captains of the camps desiring the same, which requisition shall be approved by the colonel of the division. Each requisition shall state the number of active members in the camp, and no camp shall at any time be entitled to a greater number of arms than the number of its active members; provided, that each camp shall be entitled to not less than sixteen (16) stand of arms.

2652. Chief of supply may order return of arms. [Ch. 16, '93.] § 3. That the chief of supply shall have the right to require the return of all such arms as may have been furnished to any camp, under the provisions of this act, whenever in his opinion the same may be needed for other purposes; and whenever the camp shall disband, or in which the active members do not number at least twelve (12), such arms shall forthwith be returned to the chief of supply.

2653. Camp to give bond. [Ch. 16, '93.] § 4. Before any arms shall be furnished under the provisions of this act, the camp applying therefor shall file with the chief of supply a bond in the penal sum of at least twice the aggregate value of the number of arms desired, estimating each rifle at ten (10) dollars, payable to the state of South Dakota, and conditional for the safe keeping and prompt return of all arms furnished. Said bond shall be signed by at least one (1) adult member of the camp, as principal, and by at least two (2) resident sureties, who shall each equalify in double the amount of the bond.

2654. Penalty for injury or refusal to return. [Ch. 16, '93.] § 5. Any member of any camp who shall wilfully or wantonly injure or destroy any arms furnished to any camp under the provisions of this act, or who shall sell or dispense therewith, or who shall refuse to return to the state or the captain of his camp, any arm or arms and accoutrements in his possession or control, within five (5) days after being duly notified to return the same, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than fifty (50) dollars, and on default of payment of such fine shall be imprisoned in the county jail not more than thirty (30) days, or until such fine is paid.

2655. Chief of supply may loan camp equipage. [Ch. 16, '93.] § 6. It shall also be the duty of the chief of supply to loan for temporary use to the Grand Army of the Republic of the department of South Dakota such camp equipage as may be desired for use at their annual meetings, upon proper requisition.

CHAPTER 19. MINES AND MINING.

ARTICLE 1. LOCATION AND SIZE OF CLAIMS.

2656. Length of claim. The length of any lode claim hereafter located within this state may equal but shall not exceed fifteen hundred feet along the vein or lode. [C. L. 1997.]

2657. Width of claim. [Ch. 115, '99.] The width of lode claim shall be three hundred (300) feet on each side of the center of the vein or crevice, provided that any county may at any general election determine upon a less width than above specified, provided that not less than twenty-five (25) feet on each side of a vein or lode shall be prohibited. [C. L. 1998.]

2658. Record. [Ch. 115, '99.] The discoverer of a lode shall within sixty days from the date of discovery record his claim in the office of the register of deeds of the county in which such lode is situated, by a location certificate, which shall contain:

1. The name of the lode.
2. The name of the locator, or locators.
3. The date of location.
4. The number of feet in length claimed on each side of the discovery shaft.
5. The number of feet in width claimed on each side of the vein or lode.
6. The general course of the lode as near as may be.

7. That when the location certificate is filed for record in the office of the register of deeds, the register of deeds shall immediately furnish to the locator or locators a certificate giving the name of the location; the name of the locator or locators; the date of filing in the office of the register of deeds; and the book and page where recorded, for which certificate the register of deeds shall receive the sum of ten cents in addition to the amount now allowed by law for filing and recording location certificates, which certificate shall be delivered to the locator or locators, who shall post the same, or a copy thereof, on the said claim on the same post or tree where the original notice is posted and in a conspicuous place. And if said certificate from said register of deeds or a copy thereof is not so posted within ninety days from the date of the original notice the said claim shall be deemed abandoned ground and be subject to re-location by any qualified locator. The said register of deeds shall, at the time of issuing said certificate, make a notation on the margin of the recorded certificate giving the date of the delivery of said certificate, which notation shall be prima-facie evidence of the delivery and posting of the same as herein provided. [C. L. 1999.]

2659. Certificate, when void. Any location certificate of a lode claim which shall not contain the name of the lode, the name of the locator, the date of location, the number of lineal feet claimed on each side of the discovery shaft, the number of feet in width claimed, the general

course of the lode, and such description as shall identify the claim with reasonable certainty, shall be void. [C. L. 2000.]

2660. Discovery shaft. [Ch. 115, '99.] Before filing such location certificate the discoverer shall locate his claim by first sinking a discovery shaft thereon sufficient to show a well defined mineral vein or lode, and not less than ten (10) feet in depth on the lower side. Second; by posting at the point of discovery, on the surface, a plain sign or notice containing the name of the lode, the name of the locator or locators and the date of discovery, the number of feet claimed in length on either side of the discovery, and the number of feet in width claimed on either side of the lode. Third, by marking the surface boundaries of the claim. [C. L. 2001.]

Essentials to valid mining claim are 1, discovery; 2, notice; 3, location; 4, marking boundaries; 5, record. *Marshall v. Harney Peak Ten. M., & M. & M. Co.*, 1 S. D. 350; 47 N. W. Rep. 290. Question of abandonment is one of intent. *Id.*

Discovery and appropriation are recognized as sources of title to mining claims, and development as condition of continued ownership until patent is obtained. *Id.*

A party in possession of a mining claim on the 28th day of February, 1877, with the requisite discovery, with boundaries marked, notice of location posted, and with a disclosed vein, by afterward recording location, notice and performing the necessary development work perfect his claim and hold possession and date his location on that day. *Caledonia Gold Mining Co. v. Noonan et al.*, 3 S. D. 189; 14 N. W. Rep 428; *Golden Terra Mining Co. v. Smith et al.*, 2 S. D. 377.

2661. Marking surface boundaries. Such surface boundaries shall be marked by eight substantial posts, hewed or blazed on the side or sides facing the claim and plainly marked with the name of the lode and the corner, end or side of the claim that they respectively represent, and sunk in the ground, to wit: one at each corner and one at the center of each side line, and one at each end of the lode. When it is impracticable on account of rock or precipitous ground to sink such posts, they may be placed in a monument of stone. [C. L. 2002.]

2662. Discovery shaft defined. [Ch. 115, '99.] Any open cut, at least ten foot face, crosscut or tunnel at a depth sufficient to disclose the mineral vein or lode, or an adit of at least ten feet in along the lode from the point where the lode may be in any manner discovered shall be equivalent to a discovery shaft. [C. L. 2003.]

2663. Time for performing labor. The discoverer shall have sixty days from the time of uncovering or disclosing a lode to sink a discovery shaft thereon. [C. L. 2004.]

2664. Certificate construed. The location or location certificate of any lode claim shall be so construed to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lie inside of such lines extended vertically, with such parts of all lodes or ledges as continue by dip beyond the side lines of the claim, but shall not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines continued, whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode. [C. L. 2005.]

2665. Claim not to extend beyond boundary line. If the top or apex of the lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior. [C. L. 2006.]

2666. Security from miner. When the right to mine is in any case separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if it be refused may enjoin such miner from working until such security is given. The order for injunction shall fix the amount of bond. [C. L. 2007.]

2667. Amended certificate filed. If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefit of this act, such locator or his assigns may file an additional certificate subject to the provisions of this act; provided, that such relocation does not interfere with the existing rights of others at the time of such relocation; and no such relocation or the record thereof shall preclude the claimant or claimants from proving any such title or titles as he or they may have held under previous locations. [C. L. 2008.]

2668. Amount of annual work. The amount of work to be done or improvements made during each year to hold possession of a mining claim shall be that prescribed by the laws of the United States, to wit, one hundred dollars annually; provided, that the period within which the work required to be done annually on all unpatented claims so located shall commence on the first day of January succeeding the date of location of such claim. [C. L. 2009.]

2669. Relocating abandoned claim. The relocation of abandoned lode claims shall be by sinking a new discovery shaft and fixing new boundaries in the same manner as if it were the location of a new claim, or the relocater may sink the original shaft, cut or adit to a sufficient depth to comply with sections twenty hundred and one and twenty hundred and three, and erect new or adopt the old boundaries, renewing the posts if removed or destroyed. In either case a new location stake shall be erected. In any case, whether the whole or part of an abandoned claim is taken, the location certificate must state that the whole or any

part of the new location is located as abandoned property. [C. L. 2010.]

Alien may take title on unpatented mining claim by transfer and it is error to hold that such transfer is an abandonment, and rendered the claim subject to relocation. *Gorman Mining Co. v. Alexander et al.*, 2 S. D. 557; 51 N. W. Rep. 346.

A person making relocation of a mining claim as abandoned ground must establish the forfeiture by a preponderance of the evidence. *Dibble v. Castle Chief Gold Mining Co. et al.*, 9 S. D. 618; 70 N. W. Rep. 1055.

Where it appeared that the owner had operated a claim for several consecutive years, that three men undertook to do the work for the year in controversy, and four disinterested witnesses, three of whom had been miner superintendents, and all engaged in mining from twenty to forty years, testified that the work was worth at least \$100, no failure to do the work is shown. *Id.*

Under sections 23, 24, revised statutes United States, providing for notice to co-owner of expenditure for assessment work, it is sufficient notice where delinquent owner is dead and no administrator has been appointed, to publish a notice addressed to "his heirs, administrators and to all whom it may concern." *Elder v. Horseshoe Mining Co.*, 9 S. D. 336; 70 N. W. Rep. 1061.

The fact that the heirs were not individually named is immaterial. *Id.*

Co-owner who makes improvements has option to serving written personal notice or to publish the same. *Id.*

Delinquencies for several years may be grouped in one notice. *Id.*

Relocation of mining ground for the purpose of excluding a co-owner is not an abandonment; abandonment is a question of intent, the purpose of the relocation being to secure the ground cannot be deemed an abandonment. *Hulst et al. v. Doerstler*, S. D. ; 75 N. W. Rep. 270.

One who files an adverse to a mining claim under another location not joined in by a co-owner is not thereby estopped from asserting an interest therein. *Id.*

2670. Certificate contain but one location. No location certificate shall claim more than one location, whether the location be made by one or several locators; and if it purport to claim more than one location it shall be absolutely void, except as to the first location therein described; and if they are described together, or so that it cannot be told which location is first described, the certificate shall be void as to all. [C. L. 2011.]

2671. Recording fee. The register of deeds shall be entitled to receive the sum of one dollar for each location certificate recorded and certified by him, and shall furnish the locator or locators with a certified copy of such certificate when demanded, for which he shall be entitled to receive fifty cents. [C. L. 2012.]

ARTICLE 2. DISPUTED MINING PROPERTY.

2672. Court order survey of mines. In all actions in any circuit court of this state wherein the title or right of possession to any mining claim shall be in dispute, the said court or the judge thereof may, upon application of any of the parties to such suit, enter an order for the underground as well as surface survey of such part of the property in dispute as may be necessary to a just determination of the question involved. Such order shall designate some competent surveyor not re-

lated to any of the parties to such suit, or in anywise interested in the result of the same; and upon the application of the party adverse to such application, the court may also appoint some competent surveyor, to be selected by such adverse applicant, whose duty it shall be to attend upon such surveys and observe the method of making the same; said second survey to be at the cost of the party asking therefor. It shall also be lawful in such order to specify the names of witnesses named by either party, not exceeding three on each side, to examine such property, who shall be allowed to enter into such property and examine the same; such court, or the judge thereof, may also cause the removal of any rock, debris or other obstacle in any of the drifts or shafts of said property, when such removal is shown to be necessary to a just determination of the question involved; provided, however, that no such order shall be made for survey and inspection except in open court or in chambers, upon notice of application of such order of at least six days, and not then except by agreement of parties or upon the affidavit of two or more persons that such survey and inspection is necessary to the just determination of the suit, which affidavits shall state the facts in such case, and wherein the necessity for survey exists; nor shall such order be made unless it appears that the party asking therefor had been refused the privilege of survey and inspection by the adverse party. [C. L. 2014.]

2673. Writs of injunction issued as affirmative relief. The circuit courts, or any judge thereof, sitting in chancery, shall have, in addition to the power already possessed, power to issue writs of injunction for affirmative relief, having the force and effect of a writ of restitution, restoring any person or persons to the possession of any mining property from which he or they may have been ousted by force and violence or by fraud, or from which they are kept out of possession by threats, or whenever such possession was taken from him or them by entry of the adverse party on a Sunday or legal holiday or while the party in possession was temporarily absent therefrom — the granting of such writ to extend only to the right of possession under the facts of the case in respect to the manner in which the possession was obtained, leaving the parties to their legal rights on all other questions as though no such writ had issued. [C. L. 2015.]

Party owning an interest less than the whole of a mining property in securing patent for entire property takes title in trust for his co-owner for his interest in the claim, his interest being such, as is not an adverse claim as would require a protest of such application for patent. *Sussenbach et al. v. First National Bank*, 5 Dak. 477; 41 N. W. Rep. 662.

In adverse claim the claimant must place the summons in the hands of the sheriff within thirty days after the filing of the adverse claim, and also use reasonable diligence to secure its service upon the defendant in the action. *Moss et al. v. Oro Fino Mining Co.*, 7 S. D. 605; 65 N. W. Rep. 19.

Where no service was made within a year, claimant is deemed not to have appeared in the proceeding. *Id.*

Where all laws, rules, regulations and customs with reference to a mining claim has been complied with, a property right has been acquired that may be transferred or inherited. *Sussenbach et al. v. First National Bank, 5 Dak. 477; 41 N. W. Rep. 662.*

ARTICLE 3. RIGHT OF WAY.

2674. Owners of mines have right of way. The proprietor, owner or owners of mining claims, whether patented under the laws of the United States or held under the local laws and customs of this state, shall have a right of way for ingress for necessary purposes over and across the land or mining claim patented or otherwise of others as hereinafter provided. [C. L. 2016.]

2675. For road or ditch. Whenever any such mine or mining claim shall be so situated that it cannot be conveniently worked without a road thereto, or a ditch or a cut to convey the water therefrom, or without a flume to carry water and tailings therefrom, or without a shaft or tunnel thereto, which road, ditch, cut or tunnel shall necessarily pass over, under, through or across any lands or mining claims owned or occupied by others, either under a patent from the United States or otherwise, then shall such first mentioned owner or owners be entitled to a right of way for said road, ditch, flume, shaft or tunnel over, under, through and across such other lands or mining claims upon compliance with the provisions of this act. [C. L. 2017.]

2676. Proceedings to obtain. Whenever the owner or owners of any mining claim shall desire to work the same, and it is necessary to enable him or them to do so successfully and conveniently, that he or they shall have a right of way for any of the purposes in the foregoing section, and such right of way shall not have been acquired by agreement between him or them, and the claim over, under, across and upon which he or they seek to establish such right of way, it shall be lawful for him or them to present to the judge of the circuit court of the several counties and subdivisions of the state of South Dakota in which such right of way or some part thereof sought to be enforced is situated, a petition praying that such right of way be awarded to him or them. Such petition shall be verified and contain a particular description of the character and extent of the right sought, a description of the mine or claim of the petitioner, and the claim or claims on lands to be affected by such right or privilege, with the names of the occupants or owners thereof; it may also set forth any tender or offer hereinafter mentioned, and shall demand the relief sought. [C. L. 2018.]

2677. Proceedings before the court. Upon the receipt of such petition and filing thereof with the clerk of such court, the judge shall

direct a citation to issue, under the seal of such court, to the owners named in the petition, of mining claims and lands to be affected by the proceedings, directing them and each of them to appear before the judge on a day therein named which shall not be less than ten days from the service thereof, and show cause why such right of way should not be allowed as prayed for. Such citation shall be served on each of the parties in the manner prescribed by law for serving summons in ordinary proceedings at law. [C. L. 2019.]

2678. Commissioners appointed. Upon the return day of the citation, or upon any day to which the hearing shall be adjourned, the judge shall proceed to hear the allegations and proofs of the respective parties; and if upon such hearing he is satisfied that the claims of the petitioner should be worked by means of the privilege prayed for, he shall make an order adjudging and awarding to the petitioner such right of way, and shall appoint three commissioners who shall be disinterested parties and residents of the county, to assess the damages resulting to the lands or claims affected by such order. [C. L. 2020.]

2679. Damages to be assessed. The commissioners so appointed shall be sworn or affirmed to faithfully and impartially discharge their duties and shall proceed without unreasonable delay to examine the premises, and shall assess the damage resulting from such right or privilege prayed for, and report the amount to the judge appointing them; and if such right of way shall affect the property of more than one person or company, such report shall contain an assessment of damages to each company or person. [C. L. 2021.]

2680. Report may be set aside. For good cause shown the judge may set aside the report of such commissioners and appoint three other commissioners, whose duties shall be the same as above mentioned. [C. L. 2022.]

2681. Petitioner entitled to right of way, when. Upon the payment of the sum assessed as damages as aforesaid to the persons to whom it shall be awarded, or a tender thereof to them, then the person petitioning as aforesaid shall be entitled to the right of way prayed for in their or his petition, and may immediately proceed to occupy the same and to erect thereon such work and structures, and make therein such excavations as may be necessary to the use and enjoyment of the right of way so awarded. [C. L. 2023.]

2682. Appeals. Appeals from the assessment of the commissioners may be made and prosecuted in the proper circuit court by any party interested, at any time within ten days after filing the report of the commissioners, and a written notice of such appeal shall be served upon

the appellee in the same manner as summons are served in civil actions. The appellant shall file with the clerk of the court to which the appeal is made, a bond with sureties to be approved by the clerk, in the amount of the assessment appealed from, in favor of the appellee, conditioned that the appellant shall pay any costs that may be awarded to the appellee, and abide any judgment that may be rendered in the cause. [C. L. 2024.]

2683. Trial of the appeal. Appeals shall bring before the appellate court only the propriety of the amount of damages, and may be tried by the court or by a jury as other cases in court. [C. L. 2025.]

2684. Appeal not to hinder work. The prosecution of any appeal shall not hinder, delay or prevent the appellee from exercising all the rights and privileges mentioned in section twenty hundred and twenty-three; provided, that the appellee shall file with the clerk of the court in which the appeal is pending a bond with sufficient sureties to be approved by the clerk, in double the amount of the assessment appealed from, conditioned that the appellee shall pay to the appellant whatever amount he may recover in the action, not exceeding the amount of such bond. [C. L. 2026.]

2685. Appellee to pay certain costs. If the appellant recover fifty dollars more damages than the commissioners shall have awarded, or the appellee shall offer to allow judgment against him to be taken, the appellee shall pay the costs of the appeal, otherwise the appellant shall pay such costs. [C. L. 2027.]

2686. Costs and expenses, by whom paid. The costs and expenses under the provisions of this act, except as herein otherwise provided, shall be paid by the party making the application; provided, however, that if the applicant shall before the commencement of such proceeding have tendered to the parties owning or occupying such lands or mining claims a sum equal to or more than the amount of damages assessed by the commissioners, then all of the costs and expenses shall be paid by the party or parties owning the lands or claims affected by such right of way, and who appeared and resisted the claims of the applicants. [C. L. 2028.]

ARTICLE 4. WATER RIGHTS.

2687. Person holding land has right to water. Any person or persons, corporation or company, who may have or hold a title or possessory right or title to any mineral or agricultural lands within the limits of this state, shall be entitled to the usual enjoyment of the waters of the streams or creeks in said state for mining, milling, agricultural or domestic purposes; provided, that the right to such use shall

not interfere with any prior right or claim to such waters when the law has been complied with in doing the necessary work. [C. L. 2029.]

2688. Right of way for conducting water. When any persons, corporation or company owning or holding lands as provided in section twenty hundred and twenty-nine shall have no available water facilities upon the same, or whenever such lands are too far removed from any stream or creek to so use the waters thereof as aforesaid, such person or persons, corporation or company shall have the right of way through and over any tract or piece of land for the purpose of conducting and conveying said water by means of ditches, dykes, flumes or canals, for the purpose aforesaid. [C. L. 2030.]

2689. Right of way limited. Such right to dig and construct such ditches, dykes, flumes and canals over and across the lands of another, shall only extend to so much digging, cutting or excavation as may be necessary for the purposes required. [C. L. 2031.]

2690. Controversy, how determined. In all controversies respecting rights to water under the provisions of this act, the same shall be determined by the date of appropriation as respectively made by the parties, whether for mining, milling, agricultural or domestic purposes. [C. L. 2032.]

2691. Deterioration not to be considered. The waters of the streams or creeks of the territory may be made available to the full extent of the capacity thereof for mining, milling, agricultural or domestic purposes, without regard to deterioration in quality or diminution in quantity, so that the same do not materially affect or impair the rights of the prior appropriator. [C. L. 2033.]

2692. Penalty for damaging lands. Any person or persons, corporation or company damaging or injuring the lands or possessions of another by reason of cutting or digging ditches or canals or erecting flumes as provided by section twenty hundred and thirty, the party so committing such injury or damage shall be liable to the party so injured for the actual damage occasioned thereby. [C. L. 2034.]

2693. Abandoned water right — bridging ditches. This act shall not be so construed as to impair or in any way or manner interfere with the rights of parties to the use of the waters of such streams or creeks acquired before the passage of this act; provided, that all water rights or ditches that have not been used or worked upon for one year next prior to the passage of this act shall be deemed abandoned and forfeited and subject to appropriation anew. Any person or persons, corporation or company who may dig any ditch or canal, dyke or flume over or across

any public road, trail or highway, or who use the waters of such ditch, dyke, flume or canal shall be required to bridge the same and keep the same in good repair at such crossing or other places where the water from any such ditch, dykes, flumes or canals may flow over or in anywise injure any road, trail or highway, either by bridges or otherwise. [C. L. 2035.]

2694. Failure to comply with law. Any person or persons, corporation or company offending against section twenty hundred and thirty-five, on conviction thereof shall forfeit and pay for every such offense a penalty of not less than twenty-five dollars nor more than one hundred dollars, to be recovered with costs of suit in civil action in the name of the state of South Dakota, before any court having jurisdiction. One-half of the fine so collected shall be paid into the county treasury of the county in which the offense was committed, and the other half shall be paid to the person or persons informing the nearest magistrate that such offense has been committed. All such fines and costs shall be collected without stay of execution, and such defendant or defendants may by order of the court be confined in the county jail until such fine and costs have been paid. [C. L. 2036.]

2695. Manner of locating water rights. Any person or persons, corporation or company appropriating the waters of any streams or creeks in this street, shall turn the water from the channel of such creek or stream, and construct at least twenty feet of ditch or flume, within thirty days from the date of appropriation, and turn the water therein; and construct at least twenty rods of said ditch or flume, if needed, within six months from the date of such appropriation, and turn the water therein; and within twenty days from the date of location, the locator or locators of such water right shall file a location certificate thereof with the register of deeds in the proper county within which such water right is situated; a copy of such certificate shall be posted at or near the head of such ditch, flume or canal, and shall contain the name or names of the locators, the date of location, number of inches of water claimed or appropriated, and the purpose of the appropriation; and in no case shall the number of inches of water claimed exceed the conveying capacity of the first twenty feet of the flume or ditch, nor shall said ditch or flume be enlarged to the prejudice or injury of a subsequent appropriator before such enlargement. [C. L. 2037.]

2696. When abandoned. On failure to commence the construction of such ditch or flume for sixty days after location, and prosecute such ditch, canal or flume to a final completion without unnecessary delay, such appropriation shall be deemed abandoned. [C. L. 2038.]

ARTICLE 5. MINERS' LIENS.

2697. Lien for work or material [Ch. 134, '95.] Every miner or other person who at the request of the owner or owners or his or their agents of any lode, lead, ledge, mine or deposit bearing silver, gold, cinnabar, copper or other ores or any coal bank or mine or at the request of any contractor or sub-contractor shall perform any labor whatever on said mine, lode, lead, ledge or deposit, or furnish any timber, rope, nails or any other materials for timbering shafts or levels for the mine owned by such owner or owners or who shall furnish any kind of material for erecting any windlass or any other hoisting, apparatus, or machinery, or for any car tracks, cars, tunnels, drifts or openings thereon, or shall perform any labor in any tunnel, or other mining works shall have a first lien prior and superior to every other lien except the lien of the state or of the United States, which shall be created after the passage of this act upon such lode, lead, ledge, mine, deposit, bank, tunnel, ditch, chute, work or improvement made in connection with the workings of any mine to secure payment of said labor or said material. [C. L. 2039.]

2698. Owner to pay, when. Every miner or other person doing and performing any work or furnishing any materials as specified in section twenty hundred and thirty-nine, under a contract either express or implied between the owner or owners of any mine or his or their agent, and any contractor working on such mine, whether such work shall be performed or materials furnished as miner, laborer or otherwise, whose demand for work so performed or materials so furnished has not been paid, may deliver to the owner or owners of such mine or tunnel or to his or their agent or superintendent, an attested account of the amount and value of the work and labor thus performed or of the materials thus furnished and remaining unpaid, and thereupon such owner or owners or his or their agent shall retain out of the first subsequent payments to such contractor the amount so due for such work and labor or materials furnished, for the benefit of the person so performing or furnishing the same. [C. L. 2040.]

2699. Duty of owner when account is presented. Whenever any account for labor performed or materials furnished as specified in the last preceding section shall be placed in the hands of the owner or owners of any mine or tunnel or his or their agent, it shall be the duty of such owner or owners or agent to furnish such contractor with a copy of such papers, so that if there be any disagreement between such contractor or his sub-contractor and the creditor of either, as the case may be, they

may by amicable adjustment or by arbitration ascertain the sum due, if any; and if such contractor or sub-contractor shall not within ten days after the receipt of such papers give such owner or owners or agent written notice that he intends to dispute the claim, or if ten days after giving such notice he shall refuse or neglect to have the matter adjusted as aforesaid, he shall be considered as assenting thereto; and such owner or owners or agent may pay the same when it becomes due, and for that purpose may deduct the amount out of any moneys due such contractor, who may in like manner deduct such amount from any moneys due by him to his sub-contractor in case such account or demand is against such sub-contractor for work and labor performed or materials furnished as aforesaid. [C. L. 2041.]

2700. Amount due from contractor, how recovered. The amount which may be due from any contractor to his creditor may be recovered from said owner or owners by the creditor of said contractor in any action at law to the extent in value of any balance due by the owner or owners to his or their contractor under the contract with him, at the time of the notice first given as aforesaid, or subsequently, according to such contract or under the same. [C. L. 2042.]

2701. File itemized statement. Any person entitled to a lien under this act shall make an account in writing of the items of labor, skill, machinery and material furnished, as the case may be, and after making oath thereto shall within sixty days from the time of completing such labor and skill or furnishing the last item of machinery or materials, file the same in the office of the clerk of the circuit court of the county or subdivision in which the lode, lead, ledge, mine, deposit, bank or tunnel may be situated, for or upon which labor, skill, machinery or materials shall have been furnished; and also file at the same time a correct description of the property to be charged with said lien, which account and description so made and filed shall be recorded in a separate book to be provided for that purpose by such clerk of court, and thereupon the same shall from the time of the completion of the work or furnishing the last item of machinery or materials, and for one year thereafter, operate as a lien on the property charged in such description; when any work and labor has been performed or materials furnished as aforesaid under a written contract, the same or a copy thereof shall be filed with said account and description; provided, that all lien claims for labor performed or materials furnished shall be concurrent liens upon the property charged, and shall be paid pro rata out of proceeds arising from the sale thereof, if the same shall be sold or upon settlement without sale. [C. L. 2043.]

2702. Holder of lien may obtain judgment. Any person holding such lien may proceed to obtain a judgment for the amount of his account thereon by civil action, and when any suit or suits shall be commenced thereon such lien shall continue until said suit or suits be finally determined and satisfied; and in all actions instituted under this act, all persons claiming liens upon the property charged shall be made parties to such action or proceeding, and the rights of all parties therein shall be determined by the court, and such order made in regard thereto as shall preserve and protect the rights of all such parties under the provisions of this act. [C. L. 2044.]

2703. Satisfaction to be entered. Any person who shall have filed his account and perfected his lien under the provisions of this act and shall have received satisfaction of his claim or demand and the legal cost of his proceedings thereunder, shall upon the request of any person interested, and within six days after such request, enter satisfaction of his lien in the office where such account and lien is of record, which shall forever thereafter discharge, defeat and release the same; and if any person holding a lien as aforesaid shall receive satisfaction as hereinbefore specified, or having been tendered the amount due on his claim or demand with legal costs, shall not within six days after receiving such satisfaction or tender of payment, enter satisfaction as aforesaid, he shall forfeit and pay to the person or persons aggrieved double the amount of damages which may have been sustained in consequence of such failure or neglect, provided he shall have been requested in such case to enter satisfaction as aforesaid. [C. L. 2045.]

2704. Act to apply to oil wells. The provisions of this act shall apply to oil wells or springs, iron and lead mines, as well as all other mines not herein specified, so far as the same may be applicable. [C. L. 2046.]

2704a. Copy of mortgage to be posted. [Ch. 114, '99.] § 1. All owners of mining claims wishing to employ miners, car men, or other laborers on their mining property shall before employing such miners, car men, or laborers, post or cause to be posted in a conspicuous position on said mining property a true copy of all mortgages or other incumbrances lying against said mining property.

2704b. Penalty. [Ch. 114, '99.] § 2. Failure to observe the provisions of this act shall subject said owner or employer to a fine of not less than one hundred nor more than one thousand dollars, or imprisonment for not more than thirty days, or both.

SAFETY APPARATUS.

2705. Safety apparatus. [Ch. 92, '97.] § 1. It shall be unlawful for any person to sink or work through any vertical or inclined shaft, where mining cages are used, at a greater depth than two hundred

(200) feet, unless the said shaft is provided with an iron bonnetted safety cage, to be used in lowering and hoisting employes, or any other persons, into or from such shaft. The safety apparatus, whether consisting of eccentrics, springs or other devices, must be securely fastened to the cage, and be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk. The iron bonnet must be made of boiler sheet iron of good quality, at least three-sixteenths (3-16) of an inch in thickness, and must cover the top of the cage in such manner as to afford the greatest protection to life and limb from any debris, or anything falling down the shaft.

2706. Penalty. [Ch. 92, '97.] § 2. Every person or corporation failing to comply with the provisions of this act, is punishable by a fine not exceeding one thousand (\$1,000) dollars.

SMELTING WORKS.

2707. Apparatus for removal of impurities. [Ch. 93, '97.] § 1. Any person or persons, corporation or companies operating smelters or dry crushing reduction works are hereby required to put in their respective works exhaust pans and dust chambers or some other contrivance for the removal of all gases, fumes, dust and other impurities that accumulate at all times in the operation of such works.

2708. Penalty for failure. [Ch. 93, '97.] § 2. Any person or persons, corporations or company that shall fail to provide all reasonable safeguard for the protection of life and health of their employes by not putting in their respective works such appliances as provided in section one of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars (\$1,000) nor less than five hundred dollars (\$500) for each offense.

2709. Negligence, proof of. [Ch. 93, '97.] § 3. Proof of the failure of any such person or persons, corporation or company to comply with the provisions of this act, shall be prima facie evidence of negligence on the part of such person or persons, corporation or company.

2710. Duty of state mine inspector. [Ch. 93, '97.] § 4. The state mine inspector is hereby empowered and compelled to visit such works at least once every month to see that the provisions of this act are enforced.

2711. When to be complied with. [Ch. 93, '97.] § 5. Any person or persons, corporation or company operating any works that come under the provisions of this act are hereby required to have such improvements complete in ninety (90) days after the passage and approval of this act.

CHAPTER 20. LAND DRAINAGE.

ARTICLE 1. GENERAL PROVISIONS.

2712. County commissioners to construct drain. [Ch. 76, '97.] The board of county commissioners of any county or the board of supervisors of any organized township, shall have power at any regular or special session, when the same shall be conducive to the public health, convenience or welfare, or when the same will be of public benefit or utility, to cause to be constructed as hereinafter provided, any ditch, drain or water course within said county or township. [C. L. 2047.]

2713. Petition — appointment of viewers. [Ch. 76, '97.] Before the board of commissioners or board of supervisors shall establish any ditch, drain or water course there shall be filed with the county auditor (or the clerk of the township) of such county, a petition signed by one or more land owners whose lands will be liable to be affected by or assessed for the expense of construction of the same, setting forth the necessity thereof, with a general description of the proposed starting point, route and terminus, and such petitioner or petitioners shall give a bond with good and sufficient freehold securities, payable to the state of South Dakota, to be approved by the county auditor or township clerk, conditioned to pay all expenses in case the board of commissioners or board of supervisors shall fail to establish said proposed ditch, drain or water course. As soon as said petition is filed said boards shall at any special or regular session appoint three resident freeholders of the county or township, not interested in the construction of the proposed work, and not of kin to any of the parties interested therein, as viewers, to meet at a time and place specified by said boards, preparatory to commencing their duties as hereinafter specified. And it shall be the duty of the county auditor or township clerk thereupon to issue to said viewers a certified copy of the petition and order of the board, who shall proceed at the time set in said order, with a surveyor who shall be a civil engineer, and shall make a preliminary survey of the line of said ditch, drain or water course from its source to its outlet. And they shall make an estimate of the total number of cubic yards of earth to be excavated and moved from said drain, ditch, or water course, and an estimate of the total cost of the construction of the whole work. [C. L. 2048.]

2714. Duty of viewers where drain occupies private ditch. [Ch. 76, '97.] In locating a public ditch, drain or water course, the viewers may vary from the line described in the petition as they deem best;

provided, they commence the ditch at the points described in the petition and follow down the line therein described as near as practicable; and, provided, further, that when there is a sufficient fall in length of the route described in the petition to drain the lands adjacent thereto, they may extend the ditch below the outlet named in the petition far enough, not exceeding one-half mile, to obtain a sufficient fall and outlet and not be detrimental to the usefulness of the whole work; they shall as far as practicable locate the ditch on division lines between lands owned by different persons, and they shall so far as practicable avoid laying the same diagonally across the lands, but they must not sacrifice the general utility of the ditch to avoid diagonal lines. And all persons whose lands may be affected by said ditch may appear before said viewers and freely express their opinion on all matters pertaining thereto. [C. L. 2049.]

2715. Establish route of ditch. [Ch. 76, '97.] The viewers, if they find the route proposed is not such as best to effect the object sought, or that the proposed drainage can be effected as well in construction with a ditch necessary for the improvement of the public highways already established or such as may be hereafter required, shall proceed to establish the route. If the route proposed is upon a section line where a public road may be required, and in all cases in which the route proposed is along highway already established, the viewers shall locate the ditch at a sufficient distance from center of such highway to admit of a good road along such central line. The earth taken from the ditch shall be placed upon the roadway so as to form a turnpike and no nearer to the margin thereof than two feet. But in locating a drain as above, the viewers shall not depart materially from the intentional [terminal] point described in the petition. [C. L. 2050.]

2716. Viewers — discretionary powers. [Ch. 76, '97.] Said viewers shall after having met at the time and place specified in the order issued to them by the county auditor or township clerk, proceed immediately to perform their said duties, unless for good and sufficient reasons it is necessary to adjourn, and said reasons shall be stated in full in their report which shall be made out and filed with the county auditor or township clerk at least two weeks before the next regular or special meeting of said board thereafter; provided, if the viewers shall find upon examination that the proposed ditch, drain or water course is not of public benefit or utility, they shall report, and their report need only state such facts. [C. L. 2051.]

2717. Hearing — notice. [Ch. 76, '97.] It shall be the duty of the county auditor or township clerk, when said report is filed, if it be in favor of said work to give public notice of the pendency of such petition and the time and place set for the hearing hereof, by publication for three successive weeks prior to said hearing, in a newspaper if there be one published in the county; if no newspaper be published in the county, then notices shall be posted in three or more public places in the township or townships where the proposed work is to be done, at

least three weeks prior to the day set for hearing. Said notice shall briefly state where said ditch, drain or water course commences, through whose lands it will pass and where it will terminate, together with the names of the owners of the land that will be affected thereby so far as those can be ascertained with reasonable diligence. [C. L. 2052.]

2718. Report — hearing — damages. [Ch. 76, '97.] Said board of commissioners or board of supervisors at the time set for the hearing of said petition shall, if no remonstrance be filed, proceed to hear said petition and consider the report of the viewers. If the report be in favor of the proposed work, and said work will be of public utility or conducive to public health and convenience, they shall establish the same as specified in the report. But if viewers report against the proposed work the board shall dismiss the petition and tax the cost as hereinafter provided. When damages are awarded to any person, persons or corporations as provided in this act, the board of commissioners or board of supervisors shall order the same to be paid out of the county or township treasury to the person, persons or corporations entitled thereto, when the same are collected by the county or township treasurer as hereinafter provided. [C. L. 2053.]

2719. Remonstrance filed. [Ch. 76, '97.] It shall be lawful for any person interested in the location of said proposed work to file with the board of commissioners of township board, at or before the time set for the hearing of the petition a remonstrance against the ditch as located by viewers on and across his lands, by setting forth his grievances therein against the action of the viewers. Any person filing a remonstrance shall file with the same a bond payable to the state of South Dakota, with not less than two freehold securities conditioned for the payment of all costs and expenses caused by such remonstrance if any action of the viewers be sustained by the viewers to be approved as hereinafter provided. Such bond to be approved by the board of commissioners or township boards; and thereupon said board shall appoint three disinterested resident freeholders of the county or township, not of kin to any person interested in the proposed work, as reviewers to meet at a specified time and place preparatory to commencing said review, and it shall be the duty of the county clerk or county auditor or township clerk thereupon to issue to said reviewers a certified copy of the petition and remonstrance and order of the board in appointing such reviewers. [C. L. 2054.]

2720. Action and report of viewers. [Ch. 76, '97.] Such reviewers shall meet at the time and place specified in the order issued to them by the county auditor, or township clerk, and proceed to review the action and report of the viewers as well as the entire premises through which the proposed work extends, and shall be vested with all power granted the viewers originally except that if they find the proposed work of public benefit or utility they shall not change the line of the ditch as located by the viewers at any other place or places than those complained of in the remonstrance, and then only far enough to do justice to the party remonstrating. And they shall return properly preserved all papers and reports they have received from either the auditor or clerk and file with said officer a report of their proceedings in the premises after having subscribed and sworn to the same at any time before their next regular meeting of said board, and if the reviewers sustain the action of the viewers and make no change in the proposed work, their reports need only to state after having made full examination of the viewers' report as well as the entire premises through which the proposed work extends they find the action of the viewers just and correct, and they sustain and approve the action of the viewers and their report. [C. L. 2055.]

2721. Report to be recorded. [Ch. 76, '97.] Upon the filing of the report of such reviewers as required by the preceding section, the county auditor or township clerk shall when the board of county commissioners or board of supervisors convenes in regular session, record the same together with the proceedings had in the matter of the petition; and if said reviewers sustain and approve the action of the viewers without change all costs occasioned in consequence of the filing of the remonstrance shall be taxed against parties remonstrating, and a fee bill shall issue thereon by the county auditor or township clerk and be collected as provided by law. [C. L. 2056.]

2722. Costs taxed. [Ch. 76, '97.] If the reviewers find the proposed work of utility, and do not sustain the entire action of the viewers but make changes in favor of the remonstrances, the cost occasioned in consequence of the filing of the remonstrance shall be taxed as a part of the total cost of the work as the same is taxed against the parties benefited in proportion to their benefit, and if the viewers find the proposed work not of public benefit or utility, the entire cost shall be taxed against the petitioners and collected as provided in the preceding section. [C. L. 2057.]

2723. Duty of reviewers. [Ch. 76, '97.] Upon filing the reports of the reviewers, board of commissioners or the township board shall, if they find such reports made in accordance with the provisions of this act, established the same as described in the report of the viewers as the same sustained, corrected or changed in the report of the reviewers. [C. L. 2058.]

2724. Proceedings after adoption of report. [Ch. 76, '97.] Whenever the board of commissioners or township board establish a public ditch, drain or water course they shall order the viewers, if the same is established without any remonstrance according to the viewers' report, or the reviewers, if the same is established according to their report, to meet at a time and place specified after a lapse of ten days, and finish the work they have already begun, by making an accurate survey of said lines as given in their preliminary report and cause stakes or monuments to be set along said line progressively down stream at each one hundred feet. And such surveyor shall in tabular form give the depth of cut, the width at the bottom and the width at the top, at the source, outlet, and at each one hundred foot stake or monument of said ditch, drain or water course. And they shall make a computation of the total number of cubic yards of earth to be excavated and moved from said ditch, drain or water course and an estimate of the total cost of construction of the whole work, and they shall set apart and apportion to each parcel of land and each corporate road or railroad, and to the county and township, when public highways are benefited, a share of said work in proportion to the benefits which will result to each from such improvements and give location of each share, its length in feet and the estimated number of cubic yards to be removed therefrom, and the price per cubic yard, and the cost of the construction of each share or allotment separately, and specify the manner in which the work shall be done. And they shall have power, where they find it necessary, to provide for running said ditch underground through drain tiles or other material, as they deem best, by specifying the size and kind of tile or other material to be used in such underground work, and shall estimate the cost of the same as part of the total cost of the work and they shall accurately describe, as the same is described on the county or township tax duplicate, each parcel of the land to be assessed for the construction of said ditch, giving the number of acres in each tract assessed and the estimated number of acres benefited. The amount that each tract of land will be benefited by the construction of said work, and the amount that each tract is assessed therefor. And they shall also ascertain and give the name of the owners of the land that are assessed for the construction of said ditch, drain or water course as far as they can be ascertained with reasonable inquiry and search of the public records, and report also whether or not the proposed ditch, drain or water course will be of public utility; and they shall specify the time in which each share or allotment of the ditch shall be constructed and completed. [C. L. 2059.]

2725. Ditch located in bed of stream. [Ch. 76, '97.] When a public ditch or water course is located wholly or in part in the bed of a private ditch already or partially constructed, the viewers shall make an estimate of the number of cubic yards of earth already excavated and the cost of the same on each tract of land, and deduct the same from the assessment thereon. [C. L. 2060.]

2726. Lands benefited to pay costs. [Ch. 76, '97.] All lands benefited by a public ditch, drain or water course shall be assessed in proportion to the benefits for the construction thereof, whether it passes through said lands or not, and the viewers in estimating the benefits to lands not traversed by said ditch shall not consider what benefits such lands will receive after some other ditch or ditches shall be constructed but only the benefits that will be received by reason of the construction of the public ditch as it affords an outlet for the drainage of such lands. [C. L. 2061.]

2727. Proceedings after adoption. [Ch. 76, '97.] In locating public drain or water course, the viewers shall estimate the damages that any person or persons will sustain by reason of the construction of such ditch, and assess such damages to parties owning lands benefited in proportion as such tract of land is assessed for benefits. [C. L. 2062.]

2728. Appeal. Any person or corporation aggrieved thereby may appeal from any final order or judgment of the board of commissioners or township board, made in the proceedings and entered upon their record, determining any of the following matters, viz.: Whether said ditch will be conducive to public health, convenience or welfare; whether the route thereof is practicable; whether the assessments made for the construction of the ditch are in proportion to the benefits to be derived therefrom; the amount of damages allowed to any one person or persons or corporations. And the appellant shall file with the county clerk or county auditor or township board an appeal bond, with at least two freehold sureties to be approved by the county clerk or county auditor or township clerk of the district court, conditioned that he will prosecute such appeal and pay all costs that may be adjudged against him in the district court; provided, that such appeal bond shall be filed within thirty days after such final order or judgment of the board of commissioners or township board is made, and after the lapse of such thirty days, no appeal can be taken. And if an appeal be taken

the county clerk or county auditor or township clerk shall withhold his notices to the viewers or reviewers to make their final report, and he shall within twenty days after the appeal bond is filed make a complete transcript of the proceedings had before the board of commissioners or board of supervisors, and of such appeal bond, and certify the same, together with all the papers filed in his office pertaining to such proposed work, to the clerk of the circuit court. [C. L. 2063.]

2729. When more than one party appeals. If more than one party appeal, the judge of the circuit court shall order the cases to be consolidated and tried together, and the rights of each party shall be separately determined by the jury in its verdict. [C. L. 2064.]

2730. Duty of clerk to let contract. As soon as the board of county commissioners or township board establish any public ditch, drain or water course, and the viewers or reviewers have fixed the time in which the shares or allotments of said ditch shall be constructed, the county clerk or county auditor or township clerk shall sell the job of digging and constructing such ditch or drain in single shares or allotments, groups of shares or allotments, or as a whole, as he may deem best for all parties interested, and he shall give notice by publication for three consecutive weeks in some newspaper published in the county where such work is to be done, or if there be no newspaper published in said county, by posting for three weeks three written copies of such notice in three public places in the vicinity of the proposed work, and one at the door of the court house in said county, of the time when and the place where he will sell to the lowest responsible bidder or bidders the said shares or allotments, and no bid shall be entertained which exceeds more than twenty per centum over and above the estimated cost of the construction in any case; and the county clerk or auditor or township clerk shall contract with the party to whom a share or allotment, group of shares or allotments or the whole number of shares or allotments is sold, requiring him to construct the same in the time and manner set forth in the report of the viewers or reviewers on which the ditches or drains are established, and take from him a bond with two freehold sureties, payable to the territory, for not less than double the amount for which the same is sold, to be by him approved, conditioned that he will faithfully perform and fulfill his contract and pay all damages which may accrue by reason of the failure to complete the job within the time required in the contract therefor; provided, that the work of constructing such ditch or drain shall commence at the outlet thereof and proceed up toward the source, which shall not be opened or constructed until all lower parts of the ditch are fully completed and accepted. [C. L. 2065.]

2731. Reselling. A job failing to be completed within the time fixed in the contract and bond shall be resold by the county clerk or county auditor or township clerk to the lowest responsible bidder, but shall not be sold for a sum exceeding twenty per centum [in excess] of the estimated value of such work, nor a second time to the same party; a contract and bond shall be entered into as hereinbefore provided, but the auditor may for a good cause shown give full time to any contractor, not exceeding sixty days, and the county clerk or county auditor or township clerk, shall fix a time for the completion of work resold not exceeding sixty days from the date of the bond; and no contractor shall be prosecuted on his bond until the section below is completed. [C. L. 2066.]

2732. Duty of county surveyor. It shall be the duty of the county surveyor, on being notified by any contractor that his job is completed, to inspect the same, and if he find that it is completed according to contract he shall accept it and give to the contractor a certificate of acceptance, stating that said job, share or allotment is completed according to the specifications of said ditch or drain, which certificate shall be a lien upon the land assessed for such share or allotment; and when a copy of such certificate is filed with the county clerk or auditor he shall charge the amount mentioned in said certificate on the tax duplicate, against the land assessed, to be collected as other taxes are collected, and when collected it shall be paid to the person holding the certificate, on an order of the county clerk or auditor. [C. L. 2067.]

2733. Viewers or reviewers to report cases, etc. Upon the letting of the contracts for the construction of said ditch, drain or water course, and the approval of the bonds to secure the same, it shall be the duty of the viewers if such work is let under their report, or of the reviewers if let under them, to meet at their former place of meeting within ten days thereafter and make a final report, in which they shall apportion the cost of locating and constructing such ditch, drain or water course, including penalties, fees, damages if any shall have been allowed, and compensation to the viewers, reviewers, surveyor and necessary assistants at the rates hereinafter specified, and award to each person or corporation owning lands assessed for the construction of said work their proportionate share of such cost, and shall file their report with the county clerk or auditor, after having subscribed and sworn to the same. And it shall be their duty to file with their report an account of the names of the assistants and the time each was employed by them, and the awards so apportioned shall be entered up by the county clerk or auditor on the tax list and duplicate as a tax against such property, and shall be collected by the treasurer as other taxes are collected, and

the amount so collected shall be paid out by the treasurer to the parties entitled thereto, on an order from the county clerk or county auditor. [C. L. 2068.]

2734. Duty of road supervisor. After the construction of such work, the town supervisor of such township in which the same is, or any part thereof, shall keep the same or such part thereof in proper repair and free from obstructions so as to answer its purpose, and pay for the same out of general township fund; and to raise the necessary money to reimburse that fund he shall apportion and assess the costs thereof upon the lands which will be benefited by such repairs or removal of obstruction, according to such benefits in his judgment. He shall make a statement of such assessment and deliver the same to the county clerk or county auditor or township clerk who shall put same upon the succeeding tax duplicate, and it shall be a lien upon the lands and be collected in same manner as state, township and county taxes. The provisions of this section shall also apply to all works constructed for the purpose of drainage under any law now or heretofore in full force in this state. If he shall be of the opinion that such assessment or any part thereof ought to be charged to lands in other townships, the supervisors thereof shall on request meet with him at any time and place by him appointed, and they shall jointly make such assessments and certificates to the county clerk or county auditor or township clerks of the proper counties or township. A majority of such supervisors as attend any such meeting shall have power to act and decide any question and to make the assessments and certificates, and upon failure of any township supervisor to perform the work required of him by this section, after ten days' notice in writing to him by any person interested, he shall be liable with his sureties on his official bond for all damages caused by such failure to perform his duty, to be recovered by the person or persons so damaged. He shall also be deemed guilty of a misdemeanor, and on conviction thereof fined not less than ten or more than fifty dollars. [C. L. 2069.]

2735. When ditch crosses two or more townships. Whenever the route of a proposed ditch, drain or water course extends into two or more counties or two or more townships, the petition shall be signed by one or more of the land owners in each county or township whose land will be liable to be assessed for the construction of such ditch, and filed with the county clerk or county auditor or the clerk of the township of the county containing the head or source of the proposed ditch, at least ten days before any regular meeting of the board of commissioners or board of supervisors, and thereupon the county clerk or county auditor or township clerks of such county or townships shall

transcribe and transmit to the county clerk or county auditor of each other county, or the township clerk of each township interested, a certified copy of such petition; and it shall be the duty of the board of commissioners of each county or the board of supervisors of each township interested in the proposed work, at their first regular meeting after such petition is filed, to appoint three disinterested resident freeholders of their respective counties or townships as viewers in like manner as provided for the appointment of viewers on a ditch in one county or township, to meet and act conjointly at such time and place as the board of commissioners of the county or township where the petition is filed may designate, and such joint viewers shall have the same powers and perform the same duties as provided in this act for the viewers on a ditch in one county or township, and they shall file a report of their proceedings with the county clerk and county auditor of each county interested, at least four weeks before the next regular session of the board of commissioners or board of supervisors, whereupon the county clerk or county auditor of each county or the township clerk of each township shall give notice for three consecutive weeks in the manner provided for ditches in but one county or township, of the pendency of such petition and the time set for the hearing thereof. [C. L. 2070.]

2736. Proceedings in case of joint ditch. The boards of commissioners of the counties or the boards of supervisors of the townships interested in a joint ditch shall at the time set for the hearing of said petition proceed to establish the same in the manner specified for ditches in but one county or township, and in all matters pertaining to such joint ditch the boards of commissioners or boards of supervisors shall act in the same manner so far as applicable as required by this act establishing ditches in but one county or township, and they shall act conjointly; and when such ditch is established the viewers shall be notified as before provided in this act to make their final report, and upon the filing of such final report the shares or allotments of such ditch shall be sold and constructed as hereinbefore provided for ditches in but one county or township, except that the county clerk or county auditor of the counties or the clerk of the townships interested shall act together as one body in performing their duties. [C. L. 2071.]

2737. Repairs of joint ditch. Such joint ditch shall be cleaned and repaired or enlarged in like manner as for ditches in but one county or township, by the joint action of the public officers of the counties or townships interested. [C. L. 2072.]

2738. Remonstrance in case of joint ditch. It shall be lawful for any person or corporation affected by a proposed ditch extending into

more than one county or township to file a remonstrance with the county clerk or county auditor of the county or the township clerk of the township in which he resides, at least five days before the regular meeting of the board of county commissioners or the township board when the petition is to be heard; and when such remonstrance has been filed and a bond for costs as provided for ditches in but one county or township, the county clerk or county auditor or township clerk shall immediately transcribe and transmit a copy of such remonstrance and bond to the county clerk or county auditor of the other counties, or township clerk of other townships interested; and then in like manner as hereinbefore provided the boards of commissioners or board of supervisors shall appoint reviewers who shall meet and act together and perform their duties as provided for reviewers in one county or township, and file a report of their proceedings with their respective boards of commissioners or boards of supervisors at or before their next regular meetings, and upon the filing of such report the boards shall, if the viewers report the proposed work of public benefit or utility, establish the same, and it shall be constructed, cleaned and repaired or enlarged by the joint action of the proper officers in the different counties or townships, as though it had been established on the report of the viewers and without remonstrance, and it shall be the duty of the county clerk and county auditor of the county or the clerk of the township in which the time and place for the meeting of viewers or reviewers is fixed, to notify the county clerk or county auditor of the other counties or clerks of other townships interested, of such time and place for the joint viewers or reviewers to meet. [C. L. 2073.]

2739. Highway or railway when benefited to pay costs. When any ditch established under this act drains either in whole or in part any public or corporate road or railroad, or benefits any of such roads so that the roadbed or graveled track of any such road will be made better by the construction of such ditch, the viewers or reviewers shall apportion to the county or township or townships if a county or state road, and to the company if a corporate road or railroad, such portion of the costs and expenses thereof as to private individuals, and require them to pay said costs in like manner as private individuals. [C. L. 2074.]

2740. Penalty for obstructing drains. If any person shall wilfully obstruct any public ditch, or shall wilfully divert the water from its proper channel, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than five nor more than fifty dollars, and shall also be liable for any and all damage occurring to any person or persons or corporations by such act. [C. L. 2075.]

2741. Sheriff to serve orders — compensation. The orders issued by the county clerk or county auditor or township clerks to viewers or reviewers shall be served by the sheriff or town constable, who shall be paid by the county or township for such services the same fees as he is allowed by law for similar services. The surveyor or engineer shall be allowed the sum of three dollars per day for each day he is necessarily engaged in performing the duties required of him by this act. The viewers and reviewers shall each be allowed two dollars per day for each and every day they are necessarily engaged in viewing and reviewing, and ditching, and making up and filing their reports. Each chainman, axman, rodman and all other hands necessary to the prompt execution of the work of locating a public ditch shall be allowed one dollar and fifty cents per day for the time actually employed. [C. L. 2076.]

2742. Majority of viewers can act. A majority of the viewers or reviewers shall be competent to perform the duties required of them by this act, provided that for ditches extending into more than one county or township there shall be present and acting a majority from each county or township interested. [C. L. 2077.]

2743. Assessment to be a lien. The amount of assessment made by the viewers and confirmed by the board of commissioners or board of supervisors shall be a lien upon all land so assessed from the date of the order of the board of commissioners or board of supervisors establishing the ditch, drain or water course, and such order together with the report of the viewers on which the ditch is established, shall be notice to all the world of the existence of such lien; and this act shall be liberally construed to promote the drainage and reclamation of wet or overflowed lands, and the amounts due to contractors holding the viewers' certificate of acceptance shall not be defeated by reason of any defect in the proceedings occurring prior to the order of the board of commissioners or board of supervisors establishing the ditch, but such order or judgment of the said board shall be conclusive that all prior proceedings were regular and according to law; provided, that the board of county commissioners are hereby authorized to issue a warrant upon the county treasurer payable out of the general funds or from any special fund not overdrawn if they so deem desirable, and accept an assignment of said certificates, which shall be placed in the hands of the county treasurer and collected with and in the same manner as other taxes levied against said property benefited, and when paid, shall be credited by said treasurer up to such funds as have been debited by the issuance of said warrant. [C. L. 2078.]

ARTICLE 2. LAND DRAINAGE BONDS.

2744. Bonds, when issued — election. Whenever ten or more actual bona fide residents of any of the organized towns in this state or that may hereafter be organized, shall present a written petition to the board of supervisors of their respective towns, praying for the ditching, draining, grading or surveying the township or any major portion thereof, the said board of supervisors shall estimate the cost of such improvements, and if they, the said board of supervisors, shall find the cost of said work as contemplated in the petition shall exceed, for the necessary machinery, implements, labor, et cetera, the sum of one thousand dollars, or that to meet said expense by a direct taxation upon the taxable property of said township would be excessive and burdensome in any one year, then said board shall be authorized and it shall be their duty to submit to the voters of the township the question of the issue of the bonds of said town at a special or regular election, giving at least twenty days' notice thereof, and specifying in the notices the specific purposes for which said election has been called and the amount of bonds to be issued, which said notices shall be posted in at least five public places in said township. [C. L. 2080.]

2745. Ballots. The ballots to be used at such election shall have printed or written or partly printed and partly written "for township bonds," or "against township bonds." And if a majority of the legal voters of such township present and voting shall be in favor of, and the majority of the ballots so cast shall be for township bonds, then said board of supervisors shall issue the bonds of the township. [C. L. 2081.]

2746. Description of lands. The bonds so issued, as provided for in section twenty hundred and eighty-one, shall be known as "town improvement bonds of township (giving the name or number of the town)", and shall have coupons attached and numbers; which said bonds shall run for a time not exceeding ten years, and to draw a rate of interest not exceeding eight per centum payable annually; and said bonds shall not be disposed of for less than their par value. [C. L. 2082.]

2747. Bond tax. See § 2299a.

2748. Moneys, how disposed of. The money derived from the sale of said bonds shall be paid to the township treasurer of such township, and

shall be used under the direction of the board of supervisors only on the construction of the work and for the necessary machinery for which the bonds were issued, and for no other purpose, and shall be paid only by the treasurer upon the order of the chairman of the board of supervisors when countersigned by the township clerk; and any violation of this section shall be a misdemeanor. [C. L. 2084.]

2749. Record of bonds. The bonds before being sold shall be signed by the chairman of the board of supervisors and town clerk and countersigned by the township treasurer, and both the treasurer and clerk of the township shall keep a true record of said bonds showing the date of issue, to whom issued, the amount and number of each bond, date of maturity and rate of interest and the amount realized from the sale of the same. [C. L. 2085.]

2750. Contracts. All grading, ditching, levees or embankments constructed under the provisions of this act shall be by contract and let to the lowest responsible bidder after due public notice, and the person to whom the contract shall be let shall be required, before he shall enter into the contract, to enter into suitable bonds with two sureties to be approved by the board of supervisors for the faithful performance of his contract, et cetera. [C. L. 2086.]

2751. Act construed. Nothing in this act shall be construed so as to allow the said board of supervisors the right to run across or go upon private property without first securing the permission of the owner or owners of said property, other than that of section lines, neither shall it be construed so as to allow a ditch to terminate so as to cause water to flood private property, but all such ditches must be complete and empty into a ravine, cooley, water course, river or stream. [C. L. 2087.]

2752. Limit of township indebtedness. The amount of indebtedness including outstanding bonds in any township shall not exceed four per centum of the assessed valuation of said township as shown by the last assessment prior to the issuing of said bonds or the incurring of such indebtedness. [C. L. 2088.]

2753. Employment of engineer. The board of supervisors may if they deem it necessary employ a competent engineer to take a level of the townships for the purposes of finding the natural fall of the land. [C. L. 2089.]

CHAPTER 21. IRRIGATION.

2754. Commissioner created. [Ch. 14, '89.] § 1. That for the purpose of carrying into effect the provisions of this act, the county judge of each county shall be ex-officio county artesian well commissioner, which office is hereby created.

2755. Application by ten resident freeholders. [Ch. 14, '89.] § 2. Before the artesian well commissioner shall take any action toward creating or establishing any artesian well, there shall be filed with him an application, signed by not less than ten resident freeholders of any township or townships in which such artesian well and the lands to be benefited thereby, and to be assessed therefor, may be situated giving a description of the place where said well is proposed to be located, and also a definite description of the beginning, the route, and the terminus of the waterway through which it is proposed that the water from such well shall flow when the same is completed and in operation, and offering the right of way for said well and such waterway through their said land, and who shall be subject to direct assessment therefor.

2756. Appointment of viewers — duties. [Ch. 14, '89.] § 3. At the expiration of twenty days after the filing of such application the said commissioners shall appoint three disinterested persons as viewers who shall without unnecessary delay proceed to personally examine the place where said well is to be located and the course, route and terminus of said proposed waterway, and shall ascertain whether said location of such well and establishment of said waterway is practicable and necessary and beneficial to the public welfare of the district in which the same is proposed to be located, and shall report the result of such investigations in writing to said well commissioner, having first been duly sworn to faithfully and impartially discharge their duties as such viewers. If any person upon whose land the proposed well is located or through whose land any waterway therefrom may pass, shall have filed any protest against the location of said proposed well and waterway, prior to the appointment of said viewers, they shall assess the damages, if any, which such person may sustain from the location of such well or said waterways through his land, and shall report said damages with the report of their proceedings made as heretofore provided.

2757. Report when damages assessed. [Ch. 14, '89.] § 4. If a majority of the viewers assess and report damages in favor of any person protesting against the location of such well or its waterways, their report

shall be presented to the board of county commissioners of said county, and if said board shall consider the proposed well of sufficient importance to the public they shall order the costs and damages to be paid out of the county treasury; but if a majority report against the claims for damages of such person he shall be liable for the costs of such appraisalment.

2758. Power of county commissioners. [Ch. 14, '89.] § 5. If it shall be made to appear to the board of county commissioners that the damages assessed are unreasonable they may set aside such assessment, and in such case the artesian well commissioner may order another appraisalment by different persons, under the same regulations as provided in the first appraisalment.

2759. Appeal to circuit court. [Ch. 14, '89.] § 6. Any person aggrieved by any decision of any board of commissioners had under this chapter may appeal therefrom to the circuit court, the same as provided relating to highways, bridges and ferries. (Section 29, chapter 29, Political Code, 1217 General Laws.) [1712 this book.]

2760. Fee of viewers. [Ch. 14, '89.] § 7. The viewers appointed under the provisions of section three of this act shall receive the sum of two dollars per day for their services as described in said section, to be paid by the persons who signed the application for said well, who shall be severally liable to pay the same.

2761. Survey after favorable report — plat filed. [Ch. 14, '89.] § 8. If the viewers make and file a written report with said commissioners recommending said location and route as practicable, necessary and beneficial the commissioners shall cause a survey and measurement of the location of said well and the line of the proposed waterway to be made by the county surveyor, and a plat thereof shall be filed in the office of the register of deeds of said county, and be subject to public inspection, and shall show the location of the well and the lines and route of the waterway therefrom.

2762. Order of location by commissioner — damages. [Ch. 14, '89.] § 9. Upon the filing of the plat and the minutes of said survey as provided in said section five, the said commissioner shall make an order in writing in which he shall declare said well and said waterways therefrom to be located in accordance with said plat and survey; provided, that in cases where damages have been appraised and assessed, the same shall first be paid to the person entitled thereto, or paid into the county treasury for their use, before such lands shall be actually taken.

2763. Railway's contribution to waterway — penalty — collection. [Ch. 14, '89.] § 10. Whenever it is necessary to construct a water

way from any artesian well across the right of way or roadbed of any railroad company it shall be the duty of the railroad, when notified by the commissioners so to do, to make and maintain the necessary opening through said roadbed, and to build and maintain a suitable culvert. Notice in writing to make such opening and to construct such culvert may be served on such company as provided in the service of summons, at least thirty days before such railroad company shall become liable. In case such railroad company shall refuse or neglect to comply with the provisions of this section, it shall be liable to a penalty of ten dollars for each day's refusal or neglect to make such opening and construct such culvert. The district attorney of the county in which such railroad company shall have refused or neglected to comply with the provisions of this section, shall upon complaint being made by the artesian well commissioner bring suit to collect such penalty or fines, and it shall be his duty to prosecute the same to a final determination in any court having competent jurisdiction.

2764. Duty of road overseers, etc. [Ch. 14, '89.] § 11. All that part of such artesian well or artesian well water course, which is laid and constructed within the limits of or across any public highway shall be under the jurisdiction of the overseer of public highways or road supervisors, and it shall be his duty to keep the same open and free from all obstructions, and when any highway is subsequently constructed along or across such artesian well waterway then so much thereof as shall come within the limits of such highway shall also be kept open and free from obstructions as above provided.

2765. Name of well. [Ch. 14, '89.] § 12. In his order locating any well under the provisions of this act the artesian well commissioner shall give the same a name by which it shall be known and recorded.

2766. Advertise for bids for construction. — contract — security. [Ch. 14, '89.] § 13. After making said order locating said well and the waterways thereof, the artesian well commissioner shall proceed to advertise for bids for contracts for sinking or making such well, and constructing said waterways. He shall give not less than sixty days' notice of the time and place where such bids may be offered and opened, by causing a notice thereof to be published, not less than eight weekly insertions, in the official paper of said county; such bids shall be filed with the county clerk of said county by the parties making the same and shall be taken subject to the approval of the board of county commissioners of said county. No contract made by the artesian well commissioner shall be valid unless approved by the board of county commissioners of such county, and their approval indorsed thereon by the chairman of said board. The artesian well commissioner shall

contract with the lowest responsible bidder giving adequate security for the performance of the work. Such security shall cover the completion of the job in the manner and within the time fixed in the contract, and the amount thereof shall be fixed by said artesian well commissioner. Said commissioner shall reserve the right to reject any and all bids and may adjourn the time for receiving such bids from time to time, by publishing a notice of such adjournment but not in all more than sixty days from, and after the time named in the first advertisement, for receiving such bids. The contract for sinking the well may be separate from the contract for constructing the waterways and may be let to different persons. Whenever any such artesian well shall have been fully completed and final report thereof made by the well commissioner, to the board of county commissioners, the said board shall turn over the control and management of said well and appurtenances to the board of supervisors of the township wherein said well is situated.

[Ch. 74, '97.] And when thus turned over to the proper township, the supervisors thereof if situated wholly in and for one township, or of the proper townships if more than one township is interested, shall have exclusive control of said well and the ditches and waterways therefrom; and they shall have the power to make such rules and regulations for the management and control of the well, the ditches, waterways and water as to the said supervisors may seem best; provided, that they shall not unnecessarily impair the rights of those who have been specially assessed for the sinking of the wells; and, provided, further, that whenever the proper board of supervisors shall have made any rule or resolution touching the control or management of the well, ditches, waterway or water from any such well, and shall have notified the persons interested either by written notice or by posting such rules or regulations for ten days in four public places in the township, any person violating any such rule or regulation shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than ten dollars nor more than fifty dollars, or be imprisoned in the county jail not exceeding thirty days or by both such fine and imprisonment.

2767. Board of assessment — meetings. [Ch. 14, '89.] § 14. Immediately after making his order locating said well, the artesian well commissioner shall notify the chairman of the board of county commissioners and the county treasurer of said county, who shall together with said well commissioner constitute a board of assessment herein. The county clerk of said county shall be the clerk of said board of assessment. The members of said board shall meet within twenty days

after receiving said notice, and may adjourn from day to day until their duties are performed as hereinafter set forth.

2768. Mode of assessment and apportionment — tax collection. [Ch. 14, '89.] § 15. The said board of assessment shall make an estimate of the costs of constructing said artesian well and the said waterways, for the purpose of raising the funds necessary for the construction of said well. They shall have power to apportion the costs thereof as follows:

1. They shall create a county fund to be known as the artesian well fund, and may levy an assessment upon all taxable property in said county, not exceeding two mills on the dollar, and the basis of value upon which the annual levy of the current or preceding year was made; provided, that not more than one-tenth of the cost of any artesian well or waterways therefrom shall be paid out of said fund, and the amount so paid shall be applied to the payment of the expenses and per diem of the well commissioners, the viewers, surveyors, members of the board of assessment, damages for right of way and other like incidental expenses.

2. They shall determine what portion of the costs of said well and its waterways shall be paid by each of the townships in which said well or said water courses therefrom, are situated; provided, that in no case shall the amount apportioned to any one township exceed one-fourth of the estimated cost of such well and waterways, and the county clerk shall present a statement of such amount to the respective clerks of such townships if organized; and said board of assessment shall establish and determine the rate of assessment necessary in such townships to raise the amount so apportioned to such townships. It shall then be the duty of the officers of such townships, who have similar duties to perform, in other matters of township revenue to levy, and they are hereby empowered to levy an assessment upon the taxable property of said township, not exceeding the rate fixed by the board of assessment for such township, which shall be placed upon the tax list under the head of "general township tax for artesian well purposes," and collected as other township taxes are collected, and shall be held by the county treasurer when collected as a distinct fund to be disbursed as hereinafter provided, to pay for constructing such well.

3. In addition to the foregoing general township and county assessments, the said board of assessment shall also make a special assessment against each piece and parcel of land directly benefited by said well and said water courses, carefully adjusting the percentum and amount of such assessments with reference to the relative distance of such lands from the well itself, and the water courses, and the amounts so apportioned shall be levied as a special tax upon said land, and shall be placed upon the

tax list by the county clerk or auditor under the head of "direct tax for artesian well," and shall be paid into the county treasury as other taxes, and kept by said treasurer in a special fund to pay for the cost of constructing said well and said waterways; said assessment shall be for a sufficient amount with the general county and township tax aforesaid to pay for said well and waterways.

2769. Annual installments. [Ch. 14, '89.] § 16. Said board of assessment may provide that the entire amount necessary to pay for the construction of said well and water courses, be levied and collected as above in one year, or they may divide the same into two, three, four or five equal installments, one of which shall be collected the first year, and one installment each year following, provided, that the portion designated as county and township tax shall all be collected the first year.

2770. Review of assessment — appeal. [Ch. 14, '89.] § 17. The owner of any lands directly assessed for the construction of any artesian well under the provisions of this act, who may feel aggrieved by such assessment, may at any time before such tax becomes delinquent, appear before the board of county commissioners of the county in which such assessment was made, and ask to have said assessment, as to his property, reviewed, and said board shall have the right to raise or lower his assessment, so as to make it just and reasonable; and an appeal may be taken from the action of said board as in other cases.

2771. Disqualification by interest — vacancy, how filled. [Ch. 14, '89.] § 18. No member of any county board, and no county officer, whose lands have been directly assessed under this act, shall act on the board of assessment. In case any member of such board is so disqualified, his place shall be filled by calling in the sheriff of said county, or if said sheriff is so disqualified, the county coroner may act on said board.

2772. Benefits — principle of assessment. [Ch. 14, '89.] § 19. All assessments of benefits under the provisions of this act shall be upon the principle of benefits derived. All descriptions of land under the provisions of this act shall be made by giving the legal subdivision thereof whenever practicable and when the tract of land which is to be benefited or affected by such well is less than such legal subdivision, it may be described by designation of the lot or other boundaries, or in some way by which it may be known.

2773. Additional assessment. [Ch. 14, '89.] § 20. Whenever the amount assessed for the construction of any well shall not be sufficient to complete the same, and to pay all the costs and incidental expenses, a further assessment shall be made to meet the deficit or additional ex-

pense. Such further assessment shall be apportioned, assessed, levied and collected as provided in the first instance, and on the same percentage, and shall be collected in one year.

2774. Enrollment of tax by clerk. [Ch. 14, '89.] § 21. It shall be the duty of the county clerk to spread on his roll the total amount of all the well taxes determined upon by the board of assessment, to be assessed upon any township at large, as a part of the township tax for the year, and he shall also spread upon said roll separately, and immediately following the other descriptions, all tracts or parcels of lands specially assessed for benefits, and shall place opposite each description the amount of taxes apportioned thereon for such benefits. All wells shall be entered separately, naming each well.

2775. Collection, mode of. [Ch. 14, '89.] § 22. All taxes assessed under the provisions of this act shall be collected in the same manner as state and other general taxes are collected, and collecting officers are hereby vested with the same power and authority in the collection of such taxes as are, or may be conferred by law, for collecting general taxes. All taxes levied under the provisions of this act, with all lawful costs, interest and charges, shall be and remain a perpetual lien upon the lands upon which they are assessed, and a personal claim against the owner or owners of such lands until they are paid.

2776. Sale for delinquency. [Ch. 14, '89.] § 23. If the taxes levied for the construction of any well are not paid to the county treasurer as provided herein, he shall proceed to sell the said lands for such taxes, at the same time and in the same manner in every respect, as in the case of any other tax and with like effect.

2777. Compensation of officers. [Ch. 14, '89.] § 24. The artesian well commissioner and the members of the board of assessment herein provided for, shall receive for their services a sum not to exceed three dollars per day for each day actually and necessarily spent by them in the discharge of their respective duties as hereinbefore described. All expenses, except on contract for constructing said well or such water courses, shall be paid out of the general fund of the county on the order of the board of county commissioners, as other claims against the county are paid; said fund to be reimbursed, out of the first money collected under the provisions of subdivision one of section fifteen of this act.

2778. Blanks drawn by attorney general. [Ch. 14, '89.] § 25. It shall be the duty of the attorney general to draft a complete set of all the blank forms that may be required under this act, and county clerks are authorized, and it shall be their duty to procure at the expense of their respective counties, the necessary books and blanks to carry out the provisions of this act.

2779. Mode of payment to contractor. [Ch. 14, '89.] § 26. No payment shall be made to any person contracting to construct or sink an artesian well or any water course therefrom under the provisions of this act except as follows: One-third of the amount to be paid for the entire performance of the contract may be paid when one-third of said work is done; one-third of said amount may be paid when two-thirds of said work is completed; but the balance of said amount shall not be paid until said contract has been fully completed and the work accepted and approved by the artesian well commissioner. The said payments shall be made in the following manner: The contractor shall make a statement of the amount claimed by him to be due under his contract, and if the same is correct it shall be approved by the artesian well commissioner, whose duty it shall be to carefully examine the work done under said contract; said claim, so approved, shall be presented to the board of county commissioners, and if correct they shall issue county orders or warrants upon the well funds of each particular well, naming it; provided, that if the assessment of taxes for such well has been divided into installments as provided in this act said board shall not issue orders payable in any one year for a larger amount than the said installment for that year, but shall draw as near as may be, to the exact amount of such installment. When such orders or warrants are presented to the county treasurer for payment, if he has not yet received sufficient funds to pay the same then such orders may be indorsed and registered as other county warrants under the general law, and shall bear the same rate of interest as other warrants.

2780. Description of assessed lands filed with register — lien. [Ch. 14, '89.] § 27. The clerk of the board of assessment provided for in this act, shall make a statement of the direct assessment for benefits made against the several pieces and parcels of lands, giving a description of such lands, the amount of the direct assessment against each piece or parcel, the name of the well for which the assessment was made, and shall file the same with the register of deeds of said county and the same shall thereafter be a lien upon said lands to secure the payment of any orders or warrants issued as herein provided; which lien may be foreclosed by the holder of such warrants or orders, and shall be prior to all other liens except for taxes.

2781. Water course unobstructed, duty of overseer of highways. [Ch. 14, '89.] § 28. It is hereby made the duty of every person through whose land any water course constructed under this act may pass to keep the same open and unobstructed. On failure so to do, any person aggrieved may complain to the overseer of highways in the district where such water course is situated, and such overseer shall have the authority, and it is hereby made his duty, to call out the persons residing

in said district who are liable for road tax, and open said waterway, and the expense thereof shall be entered by the county clerk as a tax against said land. All wells attempted to be sunk under the provisions of this act, which have been completed and accepted, or shall hereafter be completed and accepted and turned over to the proper townships, shall be deemed, and are hereby declared to have been legally sunk, and all contracts made for the sinking of such wells are hereby ratified and legalized; and where the public has received and retained the benefits of such wells no county, township, corporation or individual shall be permitted to avoid the payment of the sum contracted to be paid by showing a failure to comply with any of the technical provisions relating to sinking artesian wells; provided, the well has been completed in substantial conformity to the contract.

CONSTRUCTION OF ARTESIAN WELLS.

2782. Who may construct. [Ch. 103, '90.] § 1. It shall be lawful for any person or persons, corporation or corporations, company or companies, to construct artesian wells upon any lands owned or leased by such person, company or corporation, for the purpose of power and the irrigation of lands for agricultural purposes, and for any and all purposes for which said water from such wells may be utilized.

2783. May enter upon private lands. [Ch. 103, '90.] § 2. Any person or company, or any corporation, formed under the laws of this state for the purposes aforesaid, may, for the purpose of laying water pipes, constructing ditches and waterways, cause such examination and survey to be made as may be necessary to the locations of the most advantageous route, and for such purpose such person, company or corporation, by themselves, their agent or servants, may enter upon the lands of any other person, company or corporation, and shall only be liable for actual damages sustained by reason of such entrance and examination; provided, that no routes for waterways shall be located without the written consent of the owner, within fifteen rods of the dwelling house or other buildings on the premises, or across any orchard or garden, without such written consent.

2784. Limitation. [Ch. 103, '90.] § 3. That no tract or parcel of improved or occupied land in this state shall, without the written consent of the owner thereof, be subjected to the burden of two or more irrigating waterways or ditches, constructed for the purpose of conveying water through said property to lands adjoining or beyond the same, when the same object can be feasibly and practicably obtained by uniting and conveying all the water necessary to be conveyed through such property in one ditch.

2785. Selection of route. [Ch. 103, '90.] § 4. Whenever any person, company or corporation shall engage in the business of supplying the water to the public for the purpose of irrigation, and shall find it necessary to convey water for such purpose through the improved or occupied lands of another, he or they shall select for the line of such ditch through such property the shortest and most direct route practicable upon which said ditch can be constructed, with uniform or nearly uniform grade, and discharge the water at a point where it can be conveyed to and be used upon the land or lands of the person or persons constructing such ditch or waterway; and in locating and constructing such waterway the same may be located along or across any public road or highway and within the lines thereof, under the directions of the overseer of highways.

2786. Surplus water. [Ch. 103, '90.] § 5. For the purpose of disposing of the surplus water from an artesian well it shall be lawful for the said person, company or corporation to construct the necessary waterways from said well on the routes as provided in section two and four of this act.

2787. Damages. [Ch. 103, '90.] § 6. Whenever it is necessary to construct waterways or ditches to convey the water from an artesian well, or from drain ditches after irrigating lands, or after utilizing the power for other purposes, through the land owned by any other person or persons, the person, company or corporation so constructing said waterway or ditch shall pay to such person or persons the actual damages, to be ascertained as hereinafter provided, which he or they may have sustained by reason of said waterway or ditch to be constructed through his or their lands.

2788. Jury — appeal. [Ch. 103, '90.] § 7. In case any person, company or corporation shall be unable to lease all of its surplus water, shall find it necessary to construct waterways or ditches for the purpose of conveying the unused water to a natural lakebed, pond, draw or stream of water, or to any other place, and cannot agree to and with the party or parties through whose land said waterways or ditches must be constructed upon the amount of damage he or they may sustain, the county judge of the county within which said well is located shall appoint three disinterested persons as a jury, who shall proceed to condemn the land for the purpose of constructing such waterways and ditches and assess the amount of damages which said party or parties may sustain by reason of the construction of such waterways or ditches, and the jurors shall each receive two dollars (\$2) per day for the time actually engaged in said work; provided, that either party feeling aggrieved by the decision of the jury condemning the said land and assess-

ing the damages thereon may appeal to the circuit court in and for the county wherein said well is located, in such manner as is or may be provided by law for appeals in other condemnation cases, and the amount of such damages upon the appeal, when demanded by either party, shall be determined by a jury, and the question of damages shall be tried as in other civil cases; and provided, further, that the construction of said waterways or ditches shall not be delayed by the appeal, if the amount of the damages assessed shall be deposited with the clerk of the said circuit court, together with a sufficient bond, to be approved by said clerk, conditioned to pay any excess that may be adjudged by said circuit court; and provided, further, that in case the said waterways or ditches are located and constructed along or across a public highway no damages therefor shall be assessed.

2789. Qualification of jurors — assessment. [Ch. 103, '90.] § 8. Before proceeding on their duties to assess the damages, as provided in section seven of this act, each of the jurors shall make the following oath of affirmation before some judge, justice of the peace, or notary public, as follows:

We, A. B., C. D., and E. F., will well and truly, according to the best of our knowledge and understanding, appraise the damages as provided in section seven of this act, and determine the damage sustained by the constructing of said wells, waterways and ditches leading from said well, owned by through the land of, to, and a true awardment make of the damages incurred.

No proceeding shall be had to assess such damage until after notice of at least five (5) days shall be given the owner or occupant of the lands over which such waterway or ditch is to be constructed, which notice shall be served as provided for the service of summons issued by justices of the peace; provided, that in case the owner of the land is absent from, or a non-resident of the county and the land is unoccupied, such notice shall be given of [as] may be ordered by the county judge.

2790. Waterway across right of way of railroad company. [Ch. 103, '90.] § 9. Whenever it is necessary to construct a waterway from an artesian well across the right of way of any railroad company it shall be the duty of the said railroad company, when notified by the owner of said well so to do, to make and maintain a suitable culvert. Notice, in writing, to make such opening and to construct such culvert may be served on such company, as provided in the service of summons at least thirty days before such railroad company shall become liable. In case such railroad company shall refuse or neglect to comply with the provisions of this section it shall be liable to pay a penalty of ten dollars (\$10), for each day's refusal or neglect to make such opening and construct such culvert. The county attorney of the county in which

such railroad company shall have refused or neglected to comply with the provisions of this section, shall, upon complaint being made by the party or parties interested, collect such penalty, and it shall be his duty to prosecute the same to a final determination in any court having competent jurisdiction; provided, however, the foregoing provision shall not be construed to compel railroad companies to maintain or build a culvert across the right of way until such railroad shall have been constructed.

2791. Obstructions — overseers of highways. [Ch. 103, '90.] § 10. All waterways which are laid and constructed within the limits of, or across any public highway, shall be under the jurisdiction of the overseer of highways, and it shall be his duty to keep the same open and free from all obstruction, and when any highway is subsequently constructed along or across such waterways, then so much thereof as shall come within the limits of such highways shall also be kept open and free from obstruction, as above provided.

2792. Penalty for interfering. [Ch. 103, '90.] § 11. Any person or persons who shall wilfully open, close, change or interfere with any head gates, water boxes, pipes or any other appliances for controlling or utilizing water for any other purposes than those contemplated by this act, or who shall wilfully or maliciously interfere with any ditch, flume, bridge, feeder or pipe, or any of the fixtures or tools, implements or appurtenances, or any property of any person, company or corporation which may be using any water for any of the purposes contemplated by this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars (\$50), nor more than three hundred dollars (\$300), and may be imprisoned in the county jail not exceeding ninety (90) days.

2793. Penalty for injury — unlawful use of waters. [Ch. 103, '90.] § 12. Any person or persons who shall knowingly or wilfully cut, dig, break down or open any gate, bank, embankment or side of any ditch, canal, flume, artesian well, feeder, pipes or reservoir in which such person or persons may be a joint owner, or the property of another, or in the lawful possession of another, or others, and used for the purpose of irrigation, manufacturing, mining or domestic purposes with intent to maliciously injure the property and waterways of any person, company or corporation, or for his or her own gain, unlawfully, and with intent of appropriating, stealing or taking, or causing the run or [to] pour out of such ditch, canal, artesian well, reservoir, feeder, pipe or flume, any water for his or her own profit, benefit or advantage, to the injury of any other person, company, association or corporation, lawfully in the possession and use of such water or such ditch, canal, artesian well,

reservoir, feeder, pipe or flume, he, she or they so offending shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifty dollars nor more than three hundred dollars (\$300), and may be imprisoned in the county jail not exceeding ninety days.

2794. Plat of route. [Ch. 103, '90.] § 13. As soon as the routes for the water ways, mentioned in this act, are located, a correct plat thereof shall be made, indicating, by proper description, the lands over which the same is located, showing the points of entering such lands and exit therefrom, and the general course of said route across or along the same and the said plats shall be certified to by the surveyor who did the work and acknowledged by the proprietor of said well. The said plat shall be recorded in the office of the register of deeds of the county or counties in which said route for waterways is located. And there shall be filed with the register of each county, aforesaid, the minutes of the survey, indicating all monuments and land-marks for ascertaining said route and the location of the land over which it passes. The right acquired by the location of said route shall be an easement running with the land so long as the waterway, thereon constructed, shall be used for the water flowing from said well, and such records shall be notice of the rights of said proprietors to said waterways and be binding upon all subsequent purchasers, incumbrancers, or successors in interest to said land, and the right to said waterways shall be appurtenant to and pass with the transfer of said well and of the lands wherever [whereon] it is situated.

2795. Repair of waterways. [Ch. 103, '90.] § 14. It shall be the duty of the proprietor of wells constructed under the provisions of this act, to keep all ditches and waterways in good repair, at all seasons of the year, and for the purpose of making the necessary repairs shall have the right to enter upon the lands where such ditches or waterways are located, along the line thereof, taking care that no unnecessary damage be done, and whatever actual damage may be done shall be paid to the owner of said lands. Whenever said ditches or waterways shall become out of repair, it shall be the duty of the proprietors of said wells to proceed to repair the same with all reasonable diligence, after due notice thereof.

2796. Repairs. [Ch. 103, '90.] § 15. That whenever said ditches or waterways have been injured or put out of order by the acts of any person, or by the animals or stock of such person, it shall be his duty to repair the same at his own expense, and no compensation for damages shall be recovered by such owner where such damage has been caused by his own act, his own negligence, or the result of depredations and injuries caused by his animals or stock.

2797. Owner of land has the right to designate the place of bridge or crossing. [Ch. 103, '90.] § 16. While said waterways are in process of construction, or at any time after completion thereof, the owner or occupant of the lands over which the same passes shall have the right to designate the places, not to exceed one for every forty rods of said waterway, where a bridge or crossing shall be constructed, which crossing, so designated, shall be built and maintained by the proprietor of said well. But the owner or occupant of said land shall have the right to construct and maintain at his own expense as many crossings as he may desire; provided, that nothing in this act contained shall be construed to require the proprietor of said wells to construct any crossing above the level of the ground at the point designated and at the place where the ditch or waterway is located; and, provided, further, that the same shall be constructed within thirty days after receiving from the owner or occupant of said land a written notice requiring the same to be done; and, provided, further, that if the proprietor of said wells shall refuse or neglect to construct said crossing, the owner or occupant of said land may construct the same and recover the value thereof from the proprietor of said wells, together with all damages for said failure.

2798. Expense of construction. [Ch. 103, '90.] § 17. The expense of constructing, maintaining and keeping in repair all artesian wells, under the provisions of this act, shall be borne by the proprietors thereof in proportion to their interest therein.

2799. Surplus water. [Ch. 103, '90.] § 18. Whenever any waterways shall be located and constructed, under the provisions of this act, across the lands of any person other than the lands owned by the proprietors of said well, such person may apply to the proprietors for the right to use the surplus water flowing in such waterway or ditch to irrigate his own lands, and the said proprietor shall allow him to use and appropriate such water by paying a just rental therefor. The rates to be paid and terms and conditions under which said surplus water may be used shall, upon proper application by the parties, be fixed and defined in a just and equitable manner by the board of county commissioners at a regular or special meeting thereof, and either party may appeal to the circuit court of the county within which the said waterway is located, from the decision of said board in the manner provided by law for appeals from said board, and the decision of said circuit court shall be final; provided, that nothing in this section contained shall be construed to prevent the use of all the water which may flow from said well by the proprietor thereof upon his own lands, except that when the said proprietor shall own land located beyond the lands across which said ditch is constructed, an equitable adjustment

of the rights of all the parties shall be made by said board, subject to appeal as aforesaid.

2800. Public use. [Ch. 103, '90.] § 19. Whenever waterways or ditches are located or constructed along any public highway the water which may be flowing therein shall be for the use of the public; provided, that when any owner or occupant of lands adjoining or lying along such highway desires to use any portion of the water flowing in such waterway or ditch he shall make application to the proprietor of said well and the adjustment of the amount of rental to be paid to said proprietor for the use of such water, and the terms and conditions thereof, shall be made by the board of county commissioners, as provided in section eighteen of this act, with right of appeal, as therein provided, but the right of the use and appropriation of such water shall be subject to the rights of the public therein.

2801. Construction of waterways across schools lands. [Ch. 103, '90.] § 20. When any waterway, or ditch, must necessarily be constructed across any of the school lands of the state, except in the highway along the same, permission to construct the same may be obtained from the commissioner of school and public lands upon an application in writing duly verified, showing the location and character of such lands, together with a proper plat showing the location of the proposed route across the same, and the permission may be granted under such conditions as shall be prescribed by such commissioner and approved by the governor.

2802. Instructor irrigation. [Ch. 73, '97.] § 1. That the governor of the state appoint a suitable instructor from the experimental station at Brookings or the State Agricultural College to perform the duties heretofore performed by the state engineer of irrigation, without any salary from the state for his services.

2803. Qualification. [Ch. 104, '90.] § 3. The state engineer of irrigation shall, before entering upon the duties of his office, take and subscribe to an oath to support the constitution of the United States and that of this state. Said oath shall be deposited in the office of the secretary of state.

2804. Appliances. [Ch. 73, '97.] § 3. The appliance and apparatus belonging to the office of state engineer of irrigation be and the same are hereby turned over to the State Agricultural College for the

use of the instructor selected by the governor to perform the duties heretofore performed by the state engineer of irrigation, to be kept in his custody and for his use, as property of the state of South Dakota.

2805. Appropriations. [Ch. 73, '97.] § 4. That the sum of five hundred dollars per year, or so much thereof as may be necessary, be allowed the State Agricultural College for necessary expenses and assistants of the instructor so selected to perform the said duties while carrying on his experimental work in different parts of the state.

2806. Powers of instructor. [Ch. 73, '97.] § 5. That all powers and duties heretofore belonging to this state engineer of irrigation are hereby conferred upon and shall be performed by said instructor selected by the governor to perform said duties.

2807. Powers and duties. [Ch. 104, '90.] § 6. The state engineer of irrigation shall have charge of the development of a system of irrigation within the state by means of artesian wells, dams, reservoirs, basins or other methods that may be found practicable. He shall recommend to the legislature, at its next session, the enactment of such measures as he may deem necessary to perfect a system of irrigation. It shall be his duty to visit such parts of the state as he may think necessary, or as the governor may direct him to visit, and make careful note of the formation, topography, water supply, and other features bearing upon the question of irrigation.

2808. Co-operation. [Ch. 104, '90.] § 7. It shall be the duty of the state engineer of irrigation to co-operate with the officers of the government of the United States in any survey or other work designed to establish a system of irrigation, or to solve the irrigation problems peculiar to the state of South Dakota.

2809. Experimental and observation stations. [Ch. 104, '90.] § 8. The state engineer of irrigation shall, as soon as practicable, establish experimental and observation stations wherever the same may be beneficial, and wherever the services of practical farmers can be secured without expense to the state. The observers appointed under this section shall note carefully the time and manner of applying water artificially to the soil, and its effects on vegetation, and they shall collect such other data as may be beneficial in solving the problem of irrigation, and shall make report of the same to the state engineer of irrigation, under such rules as the said engineer may prescribe.

2810. Analysis. [Ch. 104, '90.] § 9. It shall be the duty of the state engineer of irrigation to procure an analysis of soil and water of different sections of the state. The president of the Agricultural

College at Brookings shall co-operate with and assist the said engineer in the work of analysis, to the end that the adaptability of the water to the soil may be determined.

2811. Shall negotiate with manufacturers and transportation companies. [Ch. 104, '90.] § 10. The state engineer of irrigation shall negotiate with manufacturers of machinery and implements used in sinking artesian wells or in constructing other works of irrigation, for the purpose of securing the lowest prices on such machinery and implements, in behalf of those who may wish to purchase the same; and he shall also negotiate with transportation companies for the purpose of securing low rates of freight on such machinery and implements.

2812. Annual report. [Ch. 104, '90.] § 11. It shall be the duty of the state engineer of irrigation to report annually to the governor on the first day of December, giving a detailed account of the work performed by him during the year, with his recommendation of such legislation as he may think needful, bearing upon the subject of irrigation.

ARTESIAN WELLS FOR PUBLIC PURPOSES.

(Ch. 103, 1895. In force June 6, 1895. Ch. 80, 1891. In force March 9, 1891.)

2813. Artesian water, how to be used. [Ch. 103, '95; ch. 80, '91.] § 1. That all subterranean waters in the state of South Dakota may be used for irrigation, mechanical and domestic purposes, as hereinafter provided.

2814. Number of wells in each township, when located. [Ch. 103, '95; ch. 80, '91.] § 2. Whenever a majority of the qualified electors of any civil township in the state of South Dakota, shall make an application in writing to the state engineer of irrigation, requesting him to locate within said civil township artesian wells, not to exceed nine in number if said wells shall be six inches in diameter, and not to exceed sixteen in number if said wells shall be four and one-half inches in diameter, for the purpose of supplying the public with water, it shall be the duty of said engineer within twenty days from the presentation to him of said application, to locate or cause to be located in said township the number of wells mentioned in said application, not exceeding nine if said wells be six inches in diameter, and not exceeding sixteen if said wells be four and one-half inches in diameter, at such places as shall, in the judgment of the state engineer of irrigation, best subserve the interest of all the land owners of the township. The majority of electors is to be determined by the vote of the civil township as shown by the poll list thereof at the last preceding general election.

2815. Application and report. [Ch. 103, '95; ch. 80, '91.] § 3. The state engineer shall within thirty days after the receipt of said written application, file the same together with his report locating said wells, in the office of the register of deeds in and for said county.

2816. Report to contain what. [Ch. 80, '91.] § 4. The report of the state engineer, mentioned in section three of this act, shall state the number of wells, the size of each well and the exact location of the same, together with a full description thereof.

2817. Notice to board of supervisors of filing of application and report. [Ch. 80, '91.] § 5. The register of deeds of the county in which said application and report have been filed shall immediately prepare and deliver to the chairman of the board of supervisors of the township in which said wells are located, a notice that the application to the engineer asking for the location of artesian wells, together with the report of the engineer, has been filed for record in said office of register of deeds. Said notice shall state the number and location of the wells, together with the size thereof, and the said register of deeds shall file in his own office a duplicate of said notice with the date of delivery to the chairman of the board of supervisors of the said township indorsed thereon.

2818. Voting of bonds. [Ch. 103, '95; ch. 80, '91.] § 6. The chairman of the board of [supervisors of] said township shall, within ten days after the receipt of said notice, from the register of deeds, cause to be posted in five public places in said township, a notice to the electors of said township, stating the time and place of an election to be held in said township for the purpose of voting upon the question of issuing bonds for the purpose of sinking artesian wells in said township, the number and location of said wells and the size thereof, which notice shall be signed by the chairman of the board of supervisors as such.

2819. Time and place of election. [Ch. 103, '95; ch. 80, '91.] § 7. The notice mentioned in section six must be posted at least ten days before any election and every such election must be held at the usual polling places in said township and upon Tuesday, between the hours of one o'clock and five o'clock p. m.

2820. Duplicate of notice to be filed. [Ch. 80, '91.] § 8. The chairman of the board of supervisors posting said notices shall, within five days after posting said notice, file a duplicate thereof with his affidavit indorsed thereon, which shall state the fact of posting five duplicates thereof, the place where the same were posted and the time when, which duplicate notice and together with the affidavit indorsed thereon,

shall be forthwith delivered to the register of deeds of the county, with whom an application to and report of the engineer of irrigation is on file.

2821. Election, how conducted. [Ch. 80, '91.] § 9. The election mentioned in said notice shall be conducted, and the vote canvassed in the same manner as township elections are now conducted. The ballots used at said election shall be printed or written in substantially the following form: "Shall the town ship of issue bonds for the sinking of artesian wells at the places mentioned in the notice of this election. Yes. Shall the township of issue bonds for the sinking of artesian wells at the places mentioned in the notice of this election. No." If at said election a majority of the legal votes cast shall be in favor of issuing said bonds, the town clerk shall, within three days after the canvass of said vote, deposit in the office of register of deeds of the county in which said township is located, a duplicate of the canvass of the votes of said township relating to the bonding for artesian wells.

2822. Papers to be recorded. [Ch. 80, '91.] § 10. All papers filed with the register of deeds pursuant to this act shall be by said register forthwith recorded in the office of register of deeds and the instrument shall remain on file in the office of register of deeds where the record is made.

2823. Board of supervisors shall advertise for bids. [Ch. 103, '95; ch. 80, '91.] § 11. The board of supervisors of the township in which any vote shall have been had upon the question of bonding for the sinking of artesian wells shall, within fifteen days after the canvass of the vote upon this question, provided a majority of the votes cast be in favor of the bonding for the sinking of artesian wells, advertise in at least one public newspaper published in the county wherein the township is located for two successive issues asking that bids be made for the sinking and casing of said wells or any one thereof. The notice so printed shall substantially comply with the report of the state engineer of irrigation, and must give the size of wells, the kind of piping used, the valves and appliances necessary to control the flow of water from said wells and the date as nearly as may be when said wells shall be completed.

2824. Bids to be filed, when. [Ch. 80, '91.] § 12. All bids mentioned in section eleven shall be filed with the township supervisors within twenty days after the publication of the notice for bids mentioned in section eleven.

2825. Work to begin, when. [Ch. 103, '95; ch. 80, '91.] § 13. Every person whose bid for sinking artesian wells under the provisions

of this act has been accepted shall, within sixty days after the acceptance of his bid, commence the actual work of sinking said wells and continue the same with all convenient speed and complete the wells as soon as the work can well be done and within the limit in this act prescribed. "Any township sinking an artesian well may pay the contractor thereof on the completion of each one hundred feet of said well, twenty-five per centum of the contract price in case the township furnishes the material for said well, and fifty per centum of the contract price in case the contractor furnishes the material therefor, but no further or additional sum shall be paid until said well is completed and accepted by the state engineer as provided in the next section; provided, however, that the payment hereinbefore provided for shall be for the number of feet of such well actually done and completed at the time of such payment and no more, and before the payment of any money as contemplated in this section, the contractor shall execute to the township a bond in an amount at least equal to the contract price of said well with good and sufficient surety to be approved by the board of supervisors, to the effect that he will faithfully execute the terms of the contract for the construction of the well and will reimburse the township for all money advanced and will pay any and all damages suffered by it by reason of any breach of said contract. Said bond shall be filed with the township clerk. The surety or sureties shall justify as provided in the chapter on arrest and bail.

2826. Acceptance of well by state engineer of irrigation. [Ch. 103, '95; ch. 80, '91.] § 14. It shall be the duty of the state engineer of irrigation when notified of the completion of any well sunk under the provisions of this act, to immediately examine the same, and if said wells shall be well constructed, and cased with the class of piping mentioned in his bid, and shall be constructed and cased with the class of piping mentioned in the contract, it shall be the duty of the state engineer of irrigation to accept the same, and forthwith file his acceptance of said well or wells duly attested by the supervisors of the township or a majority thereof, where said wells are located, and whenever the wells mentioned in this section shall comply with the provisions of this act, it shall be the duty of the supervisors aforesaid to attest the acceptance of the state engineer of irrigation.

2827. Water to be conveyed, where. [Ch. 103, '95; ch. 80, '91.] § 15 The board of supervisors of every township in which any such well shall be located, may pipe or convey the water from such well to the highest point of land upon the tract to be irrigated from said well as hereinafter provided, and for that purpose may cause said piping or conveyance of the water to be done in the manner hereinafter provided.

2828. Deed of land to be obtained. [Ch. 103, '95; ch. 80, '91.] § 16. Before any contract for the sinking of an artesian well shall be let, the person upon whose land the said well is located, shall make to the township in which the well is located a good and sufficient deed of not less than one acre of land upon which said well is located, with the right of way from the highway to the said well, and the right to lay pipe or make ditches from said well across the land on which said well is located to the lands of the adjoining owners; provided, that in case any such well shall be located in any town or village, whether incorporated or not, such lots or blocks less than one acre of land as may be necessary, may be conveyed to such township for the purposes of such well.

2829. Civil townships to receive and hold real estate. [Ch. 103, '95; ch. 80, '91.] § 17. All civil townships in the state of South Dakota are hereby authorized and empowered to receive and hold grants of real estate for the purposes mentioned in section sixteen of this act and for the purposes of constructing and maintaining artificial lakes and reservoirs.

2830. Application for use of water. [Ch. 80, '91.] § 18. At any time after the contract for sinking of any well has been completed, any person owning land in said township desiring the use of any water from said well for the purpose of irrigation, shall make to the board of supervisors of the township an application in writing, describing the tract of land to be irrigated and the number of acres to which water is to be applied, and that the applicant is willing to pay for the same in acre feet.

2831. Board of supervisors to contract for use of water. [Ch. 103; '95; ch. 80, '91.] § 19. Within ten days after the filing of said application for water, the board of supervisors shall enter into a contract to furnish water to the owner for the land described at a price per acre foot of water, to be fixed in said contract, which shall in no event be less than one dollar (\$1.00) per acre foot per annum, which sum shall be used and employed for the maintenance and payment of said well, until the well, ditches and reservoirs are fully paid for out of the rentals; provided, that whenever said owner of the land applies to the board to furnish him water, that the board may provide that the water be conveyed to the land to be irrigated at the said owners' expense; provided, further, that for the purpose of conveying said water to the land proposed to be irrigated, the owner thereof, or the township shall have the right of condemnation, as provided in chapter one hundred and three, laws of eighteen hundred and ninety. The lessees, or any number or one of them obtaining water flowing from any well

constructed under the provisions of this act, shall have the right at any time to purchase from the township, by and with the consent of a majority of the freeholders of said township determined at a general or special election called by the board of supervisors for that purpose in which said well is located, the well from which he or they obtain water, by paying to said township the cost of construction of said wells, ditches and reservoirs, together with the amount for which said well was bonded. In case the waters from any such well are not leased to any person, then the board of supervisors of such township shall have the power and right, by and with the consent of a majority of the freeholders of said township determined at a general or special election called by the board of supervisors for that purpose, to sell unto any person owning land in the vicinity where such well is located, such well constructed under the provisions of this act, for the amount of bonds issued for the construction of said well, ditches and reservoirs; provided, that said land be so situated as to be susceptible of irrigation from the waters from said well.

2832. Application and contract to be filed with register of deeds. [Ch. 80, '91.] § 20. The board of supervisors of the township shall file or cause to be filed for record in the office of the register of deeds of the county in which said township is located, the said application and a duplicate of the water contract, which shall be recorded by the register of deeds, and from that time the said rights given under the said contract shall run with the title of the land, and shall not be severable therefrom until default is made in the payment of water rent, which default must have continued thirty days before the right to the water mentioned in said contract shall be severable from the land.

2833. Lien upon land for water rent. [Ch. 103, '95; ch. 80, '91.] § 21. Every township having constructed wells under this act shall have a lien upon the lands mentioned in said water contract from the time said contract is filed with the register of deeds as provided in section twenty hereof, and may foreclose the said lien upon said lands described in the contract by advertisement as now, or as may be hereafter provided for the foreclosure of real estate mortgages.

2834. Water rent, how collected — disposition of. [Ch. 80, '91.] § 22. It shall be the duty of every township treasurer to collect the water rents mentioned in this act, and immediately pay the same to the county treasurer of the county, whose duty it is to set the same aside as a fund out of which he is directed to pay the interest upon the water bonds of the township as said interest shall become due.

2835. Township board may levy tax. [Ch. 80, '91.] § 23. In case there shall not have been sufficient money paid into the county treas-

ury for water rents on the first day of April in any year to pay the amount of interest on the water bonds for the year, then it shall be the duty of the civil officers of said township to levy and collect a sufficient tax to pay the interest upon the said bonds, and it is hereby made the duty of the township board to levy upon the taxable property of the civil township a sufficient tax to pay the interest upon the water bonds, whenever there shall be an insufficiency of funds from water rent to pay the interest as in this section provided, and after five years a sufficient tax shall be levied upon the taxable property of the civil township to provide a sinking fund for the payment of the principal of the bonds when due, but in no event shall such tax exceed three per centum upon the taxable property of the township in any one year.

2836. Redemption of bonds. [Ch. 80, '91.] § 24. When said bonds become redeemable, and the civil township has money in the sinking fund, or other money which may be properly applied to that purpose because not otherwise appropriated, the township treasurer shall apply all such money to the redemption of the bonds. Notice of such redemption shall be given by the financial agency at which the bonds are made payable, which may be anywhere in the United States, by one publication in a paper selected by it, and if payable at the township and by the treasurer, notice may be given by one publication in a newspaper of general circulation in and published within the county, and in either case the interest shall cease at the end of two weeks from the date of such publication. When redeemed the bonds shall be canceled by the treasurer or clerk, or in their absence or failure, then any supervisor, who shall certify the same across their face and enter it in the clerk's record book of proceedings, describing the bonds severally.

2837. Bond of township treasurer may be increased. [Ch. 80, '91.] § 25. Whenever the amount of money to come into or through the hands of the township treasurer as proceeds from the sale of bonds, as under the provisions of this act with all other township funds in his hands exceed the amount of the bond now required to be given by the township treasurer, the board of supervisors shall require an additional bond of double the amount of money so about to come into his hands.

2838. A registry of each bond to be kept. [Ch. 80, '91.] § 26. Before the bonds are attested by the county auditor or the county clerk he shall carefully examine the returns of the election on file in his office, and shall satisfy himself by the evidence that may be furnished by the officers of the civil townships that such election and return are in accordance with the provisions of the notices for the election and of this law; and if satisfied that said bonds have been so lawfully voted. he shall, in a book kept for that purpose, preserve a registry of each

bond, showing in separate columns and entries the name of the civil townships issuing the bond, the number of the bond, the denomination thereof, the date of issue, and other facts, and upon each bond shall indorse the following certificate:

“ I hereby certify that the within bonds for hundred dollars of civil township county, state of South Dakota, is issued in accordance with law, and by authority of a majority of the legal voters of said township, voting at an election duly held, 189..., for that purpose and is duly registered in this office.”

The blanks shall be filled according to the fact, and the certificate officially signed by the county auditor or clerk and attested by a seal of the county; and in addition thereto the county auditor or clerk shall officially attest the execution of the bond as in this act provided. The validity or obligation of any such water bond, so registered and certified, shall not be questioned in any court or tribunal, but every such bond shall be and remain valid and binding.

2839. Bonds to be issued by boards of supervisors. [Ch. 103, '95; ch. 80, '91.] § 27. The bonds mentioned in this act shall be issued by the board of supervisors of any township declaring in favor of issuing said bonds. The bonds shall be in denominations of not less than one hundred nor more than one thousand dollars; shall be numbered from one upwards consecutively; shall bear the date of their issue; shall be made payable to the purchaser or bearer; shall be payable ten years from date and redeemable at the option of the township after five (5) years, and shall bear interest at a rate not exceeding eight per centum per annum, payable annually with interest coupons attached, and principal and interest shall be payable at such place as may be designated by the board of township supervisors. The bonds and each coupon shall be signed by the chairman of the board of supervisors of the township, and shall be attested by the county auditor under his official seal. The board of supervisors shall, at or before the time of issuing such bonds, levy an annual tax upon all the property of the township based upon the assessment taken next preceding the issuance of said bonds, sufficient to pay the interest and also the principal thereof when due. If, however, during the life of said bonds there shall be in any year funds in the township treasury derived from water rentals as provided in section nineteen of this act, wholly or partially sufficient to pay the interest of the bonds and the due proportion of the principal thereof for such year, the township supervisors may remit as the case may be, the whole tax so levied for that year or such portion thereof as may not be required to make full payment as aforesaid. Said bonds shall be printed, engraved or lithographed on good bond paper, and a

duly authenticated copy of sections six, seven, eight, nine and eleven of this act shall be printed on the back of each bond. If the coupon of any such bond or the bond proper shall not be paid when due by the civil township and for a period of six months thereafter, the holder thereof may present the same to the county clerk or county auditor of the proper county with affidavit of some person to the fact of such non-payment after presentation, and the county clerk and county auditor shall make a record of the fact and the amount so due, and if the proper tax be not already levied by the township board of the civil township, the county clerk or county auditor shall levy and extend upon the tax lists against all the taxable property of the township, a rate sufficient to produce an amount necessary to meet the said payment, which said tax shall be collected as other township taxes are collected. From the first money which comes into his hands from this tax, the county treasurer shall pay the amount due upon the coupons; then the bonds so defaulted and the coupons and bonds so paid and received by the county treasurer shall be delivered to the treasurer of the civil township and receipted for the same as money. Such tax shall be levied from year to year by the county clerk or county auditor, and extended upon the tax lists and collected and used by the treasurer in redemption of coupons and bonds until they are fully redeemed and paid, unless they are meanwhile withdrawn from such protest by the holder. Such tax shall not exceed two per centum in any one year and shall be in addition to all other taxes authorized.

2840. Bonds to be a lien upon civil township. [Ch. 80, '91.] § 28. Bonds issued under this act shall be a lien upon the civil township issuing them, and if other provisions of law fail or seriously delay the payment of the interest or principal by the neglect or refusal of officers to perform their duty, the circuit court for the county may upon the application of the holder of such bonds or their coupons, in payment of which default has been made and notice to the civil township, cause such taxes to be levied as will meet the obligations, and when collected to apply them to the payment of such coupons and bonds.

2841. Process against civil township shall be served, how. [Ch. 80, '91.] § 29. In every action or proceeding against the civil township, or in which the civil township is a party in any manner, it shall be sufficient to serve all process, orders and notices or other writs or papers upon the chairman of the township board, or if he cannot be conveniently found, upon either of the other officers of the civil township. When any officer is so served or notified he must promptly inform the other officers of the civil township, and the township board of the civil township shall give direction concerning the action or proceeding.

2842. Wells for filling artificial reservoirs, etc. [Ch. 80, '91.] § 30. If at any time the petitioners for artesian wells as herein provided shall state in their petition to the state engineer of irrigation that they desire said wells or any of them sunk for the purpose of filling lakebeds, streams or artificial reservoirs in said township for public purposes, said wells shall be sunk and all the provisions of this act in reference to obtaining the same shall apply to such wells, excepting that the constant flowing of said wells shall be allowed, unless in the judgment of the state engineer the flow of other artesian wells used for domestic and irrigation purposes are diminished thereby, and it is hereby made the duty of the township board of supervisors, by proper dams and other appliances to retain as far as possible the waters from said wells within the township providing for said wells. Whenever it shall be necessary to flood said lands it shall be the duty of the township through its supervisors to purchase the same if such lands can be purchased for the price of other like lands in that locality, and if the lands cannot be so procured, then the township shall pay to the person or persons or corporation owning said lands about to be flooded, such actual damages as may be thereby sustained, to be ascertained under the provisions of chapter one hundred and three, laws of eighteen hundred and ninety; all of said chapter one hundred and three of the laws of eighteen hundred and ninety is hereby retained in full force, excepting where the same is in conflict with this act.

2843. Previous provisions to apply. [Ch. 103, '95; ch. 80, '91.] § 31. Whenever it shall appear necessary from the report of [the] state engineer locating said wells to pipe, convey or dam the water flowing from said artesian wells, or to construct reservoirs in which to store the water therefrom, the contract for the same shall be let in the same manner as is provided for sinking of artesian wells, and the money for such work shall be raised by bonding said township, and shall be voted upon as herein provided in reference to artesian wells, and all the provisions of this act in reference to bonding civil townships for the sinking of said wells and the payment of the bonds issued therefor, shall apply to the work mentioned in this section.

2844. Number of wells may exceed sixteen. [Ch. 80, '91.] § 32. Whenever the application to the state engineer for artesian wells shall call for a well smaller than four and one-half inches in diameter, authority is hereby given for the location and sinking in said township of more than sixteen artesian wells.

2845. Second petition may be made. [Ch. 103, '95; ch. 80, '91.] § 33. At any time after the completion of the wells mentioned in the first application, and after the complete utilization of all the waters

flowing from the said wells in the manner in this act provided, that a majority of the residents of said township may apply to the state engineer for the location of other artesian wells in said township, and the provisions of this act in reference to the first petition shall in all things apply to the proceedings with reference to the second petition.

2846. Rules for use of water. [Ch. 103, '95; ch. 80, '91.] § 34. The state engineer may, and when requested by the township board shall prescribe rules and regulations for the distribution and use of water from public wells not in conflict with law, subject to the approval of the township board of supervisors.

2847. Record to be kept by the person sinking well. [Ch. 80, '91.] § 35. It is hereby made the duty of the township board to embody in the contract for the sinking of said public artesian wells a provision that the persons sinking said wells shall make a record of the depth of each well and the formations entered or passed through in the construction of the same, and such provision is hereby made the essence of the contract, and a violation thereof shall be construed to be a violation of the contract.

2848. Waters to be applied, how. [Ch. 103, '95; ch. 80, '91.] § 36. The waters derived from artesian wells pursuant to this act shall be applied for the purposes of irrigation for domestic purposes, which is hereby defined to mean for household use; for the supply of domestic animals kept with and for the use of the household and farm, and the watering and sustaining of trees, grass, flowers and shrubbery about the house of the consumer, in an area not exceeding one-half acre of land, and for manufacturing purposes; provided, that whenever the use of said wells for manufacturing purposes will in no manner obstruct or materially diminish the waters for irrigation purposes, the board of township supervisors are authorized to lease the power for such manufacturing purposes as in their judgment will best subserve the interest of the people; said license shall not be for a period exceeding ten years; provided, further, that the lessee, his heirs, or assigns, may at the end of ten years renew said lease by paying the rental at which said power shall be appraised at the end of that period, and the moneys arising from the rental of said power shall be paid into the county treasury, and be used as a fund out of which shall be paid the interest and principal of said water bonds.

2849. Public watering place provided. [Ch. 103, '95; ch. 80, '91.] § 37. The state engineer may at the expense of the township conduct the water from each well to a point on the public highway nearest thereto, and provide for the reception of said water, a tank not less

than ten feet in length, three feet in width, and two feet in depth, in which sufficient water shall be kept to supply the general public for the purpose of watering stock and other domestic uses.

2850. Bids for piping and conveying water to be asked. [Ch. 103, '95; ch. 80, '91.] § 38. The board of supervisors of every township may advertise for bids for piping and conveying water, and shall let the contracts therefor in the same manner as is provided in this act for letting contracts in reference to the sinking of artesian wells.

2851. Chairman of board of supervisors to superintend wells. [Ch. 103, '95; ch. 80, '91.] § 39. The wells mentioned in this act shall be under the immediate charge and supervision of the chairman of the board of supervisors of the township subject to the rules prescribed by the township board and ratified by the state engineer; and such chairman shall receive as his compensation therefor the sum of fifty dollars (\$50) per year, which shall be in full for all services in connection with said wells, the distribution of water and the making of all contracts, but the compensation above mentioned shall not attach until one well is fully completed and accepted. It shall likewise be the duty of the chairman of such board to supervise the construction of said wells; to be present during the piping thereof; to measure each section of pipe as the same is placed in the well; to see that the connection of the joints are properly made and the well constructed in full compliance with the terms of the contract and to keep a full record of the daily construction and assist in keeping the log of said well. If for any cause the chairman is unable or unwilling to perform the requirements as above set forth, the board of supervisors shall employ some competent person to perform the duties of the chairman as specified in this section during the construction of said well. For such services, the chairman, or in case of his failure to act, such person so employed shall receive such compensation as shall be just, not exceeding two dollars (\$2) per day for the time actually employed.

2852. Wells to be inclosed. [Ch. 80, '91.] § 40. Each of the wells constructed under the provisions of this act shall be inclosed by a substantial building at least six feet square and constructed in a substantial manner, sided with two-inch plank or an equivalent and properly roofed and anchored. Said building shall at all times be securely locked.

2853. County surveyor to locate wells. [Ch. 103, '95; ch. 80, '91.] § 41. It shall be the duty of the county surveyor to locate the wells in any township in his county in the manner provided in section two of this act, whenever requested so to do by the state engineer of irriga-

tion, and when said wells are so located by the county surveyor, he must join with the state engineer in signing the report of such location. His compensation shall be three (3) dollars per day and mileage, but the state engineer may for good cause stated, appoint any other competent surveyor to do the work, and his certificate shall be of equal force with [the] county surveyor's certificate and his compensation shall be the same as that of county surveyor. Such services shall be paid for by the township in which said well is located.

2854. Use of water from private wells limited. [Ch. 80, '91.] § 42. Any person, association or corporation owning land shall have the right to sink or bore an artesian well or wells on his, their or its lands for the purpose of procuring water for domestic use, for irrigation or for manufacturing purposes; but in wells hereafter constructed no more water shall be appropriated by such person, association or corporation than is needed for said purposes, when such additional use of water interferes with the flow of wells on adjacent lands.

2855. Location of wells. [Ch. 80, '91.] § 43. In locating wells in townships which have established and put down wells under the provisions of this act for public use, or by private parties, due regard shall be had for their proper distribution in order that the flow of the wells may be properly equalized and least likely to interfere with each other. Should any well, in such township, public or private, be located so near any well already completed or in process of completion as to be likely to interfere with the same, any person may complain in writing to the state engineer, who shall, without delay, proceed to examine the locality and determine from its topography and the proximity of the wells, whether, in his judgment, the wells as located would unduly interfere with the one already completed or in course of completion. If in his judgment there will be no material interference, the location will not be changed, but if in his opinion the well as located will materially interfere with the one completed or in course of completion, he shall change the location of said well to some more suitable locality; provided, that when permanent buildings have been located on any farm, prior to the sinking of any artesian well on any adjoining farm, this act shall not be construed as prohibiting the agent or proprietor of said farm from sinking an artesian well at or near said building without reference to the proximity of any other artesian well. The state engineer shall, within five days after said examination, make a written statement of his decision and file the same or a copy thereof in the office of the clerk of the circuit court of the county wherein the said wells are located. Any person aggrieved by the decision of the state engineer may, within ten days after the filing of his decision in the office of the clerk of the cir-

cuit court, appeal from the same to the circuit court, and upon such appeal the question shall be tried de novo.

2856. Flow and pressure of wells to be determined. [Ch. 80, '91.] § 44. The state engineer is hereby authorized and it is made his duty to measure or cause to be measured the flow and pressure of all artesian wells established and put down under the provisions of this act, public and private, at such times as he may deem proper, for the purpose of determining the increase or diminution of the flow or pressure of said well, and is hereby authorized to enter upon any grounds for the purposes aforesaid, and the owner or owners of such well or wells are hereby directed to furnish the necessary material to construct a suitable wiewer to measure the flow and all reasonable conveniences shall be afforded for this purpose.

2857. Wells to be cased. [Ch. 80, '91.] § 45. Every person sinking or boring for an artesian well shall cause to be placed in such well a proper and sufficient casing of strength sufficient and so arranged and placed as to prevent the caving in of such well and to prevent the escape of water therefrom where it is desirable to confine the same, and to provide the necessary valve and appliances to prevent or control the flow of water from such well.

2858. Waters shall not be wasted. [Ch. 80, '91.] § 46. No person controlling an artesian well shall suffer or permit the water thereof to flow to waste, unless, and so far as reasonably necessary, to prevent the obstruction thereof, or to flow or to be taken therefrom save for beneficial uses; provided, this shall not be so construed as to prevent the reasonable use of said water for the necessary irrigation of trees standing along or upon any street, road or highway or for ornamental ponds or fountains or the propagation of fish.

2859. Inspection of wells. [Ch. 80, '91.] § 47. Any township supervisor, the county commissioners, road overseers and aldermen or other city officers within their respective townships, counties, cities and towns, upon complaint of any person that the proprietor of any artesian well, or person controlling the same, is wont to suffer the waters thereof to unreasonably run to waste therefrom or have in any respect violated this act, may at any reasonable hour of the day or night enter upon any premises where such well is situated for inspecting the same and for ascertaining whether there is sufficient cause for such complaint, and in order to institute or cause to be instituted criminal prosecutions, for any violations of this act, and every person sinking or boring for an artesian well upon his own land or suffering others to do so shall be deemed in law to expressly license such entry of the officers aforementioned, or any of them, for the purposes of such inspection and examination.

2860. Criminal action may be taken. [Ch. 80, '91.] § 48. If any person, company or corporation, being the proprietor of or controlling any artesian well, shall suffer the same to flow without causing it to be furnished with the necessary valves or appliances for arresting and preventing the flow of water therefrom, as provided in section forty-five of this act, or who shall knowingly permit the water thereof to flow to waste unnecessarily and to the injury of others, or being in possession of or controlling the premises where any artesian well is situated shall wilfully prevent any officer entitled by this act to visit and inspect the same, or to measure the flow and pressure thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding three months, or both such fine and imprisonment, in the discretion of the court wherein conviction is had.

2861. Township and village to unite in bonding to secure artesian well. [Ch. 80, '91.] § 49. Whenever any township in which an incorporated village is or shall be located, is desirous of sinking an artesian well for domestic and general public purposes under the provisions of this act, it shall be lawful for the incorporated village to join with the township in voting upon the question of bonding, the electors of the entire township, including the village, shall vote upon the question of bonding in the same manner as if there was no separate incorporated village, and the bonds so issued shall be a lien upon all taxable property of the township and village alike.

2862. Repairs of wells and all appurtenances made at the expense of township. [Ch. 103, '95; ch. 80, '91.] § 50. The township board of supervisors shall keep all wells, ditches, dams, pipes, and appurtenances in good repair, at the expense of the township, and shall pay for the same out of the township funds not otherwise appropriated. Wherever an artesian well or wells have been located in any township under the provisions of this act, and bonds voted therefor, or any other steps taken for the construction of said well or wells, and from any cause the bonds are not sold or the construction of said well or wells commenced within one year from the date of locating said well or wells, all acts or proceedings had by said township under the provisions of this chapter shall be null and void, and such township may proceed anew to make application for the location and construction of wells under this act. In case bonds have been issued and remain unsold, as contemplated in this section, the board of supervisors of said township shall publicly destroy the same in the presence of the county auditor, and the fact of such destruction shall be entered upon the bond register of such township, and the county in which such township is situated.

This section shall likewise apply to all wells heretofore located under the provisions of chapter eighty of the session laws of eighteen hundred and ninety-one, of the laws of South Dakota.

2863. Provision in case of disability of state engineer. [Ch. 103, '95; ch. 80, '91.] § 51. Whenever for any reason the acts herein designated to be performed by the state engineer of irrigation so far as relates to the locating of wells cannot be performed by him, he shall have power to appoint some competent person to perform that duty, and the county in which said duty is performed shall pay such person three dollars per day, together with five cents per mile for each mile necessarily traveled in going to and returning from the township in which said wells are to be located. In locating wells under the provisions of this chapter, the township board shall furnish the state engineer with the necessary chainman and help in locating said wells.

2864. Supervisors may modify terms of contract. [Ch. 103, '95; ch. 80, '91.] § 52. If for any reason during the construction of any well under the provisions of this act it shall appear to the satisfaction of the board of supervisors of the township, that it is impracticable or impossible to complete the well under the terms of the contract originally made, the board of supervisors of such township in which said well is being constructed, shall have the power to enter into a written agreement with the contractor constructing said well, to modify the terms of the original contract, which agreement, when so made, shall be presented to the state engineer of irrigation, and if in his judgment, upon investigation, the conditions warrant the change of the original contract, he shall ratify in writing the agreement so made and entered into, and such well may then be completed in accordance with the provisions of the contract as modified. No such modification shall be valid and of any force and effect unless so ratified by the state engineer of irrigation.

SINKING WELLS, LEVYING TAX.

2865. Petition for location of well — duty of engineer of irrigation. [Ch. 109, '93.] § 1. Whenever a petition signed by not less than fifty (50) resident freeholders of any county in this state of whom fifteen (15) shall be each the owner of not less than eighty acres of land located on any natural water course on which an artesian well is sought to be located shall petition the engineer of irrigation for the location and establishment of an artesian well, it shall be the duty of such engineer of irrigation to personally investigate and view out the course and extent of such natural water course for the purpose of determining the practicability and advisability of such well. And if in

his judgment it is found practicable and advisable, he shall locate and establish an artesian well on such water course at some point where it will render the greatest benefit to the lands to be effected thereby, and shall make and file with the county auditor of the county wherein such well may be located a full report of his proceedings in locating and establishing any such well together with the petition on which such proceedings were based. He shall at the same time file with the county auditor, an estimate of the total cost for constructing and putting down such well.

2866. Board of viewers, duty of. [Ch. 109, '93.] § 2. On the receipt of the report of the engineer of irrigation, locating any well as herein provided, the county auditor shall appoint two (2) disinterested persons of his county who shall together with the county surveyor constitute a board of viewers who shall without unnecessary delay after being duly sworn to a faithful performance of the duty proceed to personally examine the location of such well, and the course and extent of the natural water course along which the water from such well would flow, and the lands located on such water course which would be affected by the flow of water from such well. They shall make a map or plat of such well and water course and the lands located thereon. They shall also make a list by description of all lands located in their county that would be affected by the flow of water from such well, and shall estimate the amount of damages, if any, that would be caused to any tract of land by the flow of water from such well. They shall add the amount of damages thus appraised to the estimated cost of such well, as made by the engineer of irrigation, and shall apportion and assess three-fourths of the total estimated costs of such well, to each tract of land benefited by such water, not exceeding one hundred and sixty (160) acres in any one tract, such proportion of this sum as the benefits to be derived by each tract bears to three-fourths of the whole benefits of such well. They shall without delay file with the county auditor a full report of their proceedings together with their map of such well and natural water course and their list of lands located thereon with their estimate of damages and benefits as herein provided.

2867. Damages, how adjusted. [Ch. 109, '93.] § 3. It shall be the duty of the county auditor, when the report of the board of viewers is filed as herein provided, to fix a day for the hearing and consideration of such report by the board of county commissioners of his county; and he shall call said commissioners together for such purpose. Such hearing shall be not less than thirty (30) days from the filing of the report by said viewers, and the auditor shall give public notice of the time and place of hearing such report by publication in an official

public newspaper of the county for three successive issues of such newspaper. Any person interested who is aggrieved by any act of said board of viewers may appear at such meeting of the county commissioners and be heard on the matter of such grievances. The commissioners at such meetings shall have power to make such changes in any damages estimated, or assessments made for benefits, by said board of viewers as shall seem to them just and equitable; and after making such changes, if any, they shall confirm the report of said board of viewers.

2868. Appeal may be taken. [Ch. 109, '93.] § 4. Any person aggrieved by any act of this board of county commissioners had under the provisions of this act may appeal therefrom to the circuit court, in the same manner as provided relating to highways and bridges.

2869. Special elections — notices to contain what. [Ch. 109, '93.] § 5. After confirming the report of the board of viewers, the board of county commissioners, at the meeting called as herein provided, shall call a special election for their county for the purpose of voting on the question of issuing the warrants of said county to the amount of the estimated costs and damages of constructing, and putting down said well as herein provided. All laws governing the calling, conducting and canvassing general elections, so far as the same may be applicable, shall apply to and govern such special election; provided, however, the notice of election shall state the location of the well or wells and the amount of warrants to be issued.

2870. Form of ballot. [Ch. 109, '93.] § 6. The ballots used at said election shall be printed in substantially the following form: "Shall the county commissioners issue artesian well warrants for sinking an artesian well at the place mentioned in the notice of this election. 'Yes.' 'No.' All the electors voting in favor of issuing artesian well warrants shall erase the word 'No,' and all desiring to vote against issuing such warrants shall erase the word 'Yes.'" If a majority of the votes cast at said election be in favor of issuing said warrants the county commissioners shall proceed to the construction of such artesian well in the manner herein provided.

2871. Warrants, how issued — to contain what — well site, how procured. [Ch. 109, '93.] § 7. The board of county commissioners shall issue the warrants of said county to the amount specified in the notice of election, which warrants shall be designated and marked on their face, "artesian well warrants," and shall show for the construction of which particular well they are issued, and shall be signed and attested as other warrants of such county, and shall draw interest at the rate

of seven (7) per centum per annum, and may be made payable in one, two and three annual payments. They shall proceed at once to procure, by purchase or gift, the site where such well has been located which shall consist of not less than one acre, the title to which shall be taken in the name of the county. Counties are hereby authorized to receive and hold real property for the purpose of this act. In case they shall be unable to procure said site by gift or by purchase at a reasonable price, they shall proceed to condemn such site in the manner as provided by law for the condemnation of school house sites.

2872. County commissioners to ask for bids. [Ch. 109, '93.] § 8. When a county shall have voted for the issuing of artesian well warrants as provided by this act, the county commissioners shall cause a notice to be published in at least one official newspaper of their county for three successive issues of such paper, asking for bids for the sinking and casing and construction of such wells. The notice so printed shall give the size of the well, kind of piping to be used, the valves and appliances necessary to control the flow of water from such well, and the date as near as may [be], when said well shall be completed.

2873. Bids filed, when. [Ch. 109, '93.] § 9. All bids contemplated by the preceding section shall be filed with the county auditor within thirty (30) days after the first publication of said notice.

2874. Contracts, by whom executed. [Ch. 109, '93.] § 10. All contracts for the construction of wells as contemplated by this act, shall be made by the board of county commissioners in the name of the county, and shall be signed by the chairman of the board and attested by the auditor. Such contract shall be made with the lowest responsible bidder, and such contractor shall give to the county good and sufficient security for the faithful performance of such work.

2875. Approval of contract before payment. [Ch. 109, '93.] § 11. Full payment on the contract for the construction of such well shall not be made until the work shall have been approved by the engineer of irrigation and accepted by the county commissioners.

2876. Name or number of well — title to site. [Ch. 109, '93.] § 12. Before making any contract for the sinking of any artesian well as contemplated in this act, the county commissioners shall give to such well a name or number by which it shall be known and designated. They shall also before letting such contract procure a good and sufficient title to the site where said well is to be located.

2877. Election may include sinking of more than one well. [Ch. 109, '93.] § 13. At any special election called as provided in this act a proposition to be voted upon may include the issuing of warrants for

the sinking of more than one artesian well; provided, the necessary petition has been filed and other proceedings had for each as provided in this act, and in such case all notices, form of ballots and other proceedings shall be made to conform to the facts.

2878. Expenses of the board of viewers. [Ch. 109, '93.] § 14. All expenses incurred by the board of viewers and other county officers in the performance of their duties provided by this act shall be paid out of the general fund of the county as other general expenses of the county are paid. Each member of the board of viewers shall receive the sum of two (2) dollars per day for each day necessarily engaged in the performance of his duties.

2879. County commissioner to create artesian well fund. [Ch. 109, '93.] § 15. Whenever artesian well warrants are voted by the electors of a county as provided herein, it shall be the duty of the county commissioners to create a county fund to be known as the artesian well fund, and all proceeds from the sale or other disposition of artesian well warrants issued under this act shall become a part of such fund. The county commissioners shall levy a special tax upon the lands to be benefited by such well shown by the report of the board of viewers and the amount of tax to be levied on each tract of land shall be the same as shown on the report of the board of viewers as corrected and confirmed by the board of county commissioners, as provided in section three (3) of this act. Such levy shall be entered on the tax books of the county, and shall be collected by the county treasurer in the same manner and with the same powers to force collection as general taxes on real property are collected.

2880. Expense of construction of wells, how paid. [Ch. 109, '93.] § 16. All expenses for the actual sinking, building and constructing of artesian wells under this act, and the purchase of sites therefor, shall be paid out of the artesian well fund.

2881. Warrants shall not be disposed of, when. [Ch. 109, '93.] § 17. No artesian well warrants shall be sold or otherwise disposed of for less than ninety-five (95) cents on the dollar.

2882. Special tax to be applied in payment of artesian well warrants. [Ch. 109, '93.] § 18. All special taxes collected under this act shall be used to pay the artesian well warrants issued in pursuance hereto, and the amounts collected for each well shall be kept separate and these amounts shall be applied toward the payment of the warrants issued, for their respective wells.

2883. Taxes to remain a perpetual lien. [Ch. 109, '93.] § 19. All taxes levied under the provisions of this act, with all lawful costs,

interest and charges, shall be and remain a perpetual lien upon the lands upon which they are levied, and a personal claim against the owner or owners of such lands until they are paid.

2884. Wells shall be owned by county. [Ch. 109, '93.] § 20. All artesian wells constructed under the provisions of this act shall be owned by the county and controlled by the board of county commissioners.

2885. County commissioner may make a special assessment, when. [Ch. 109, '93.] § 21. Whenever the amount levied by special assessment for the construction of any well shall not be sufficient to pay the three-fourths of the actual cost of constructing said well, and the damages as contemplated in this act, the county commissioners shall make a further special assessment to meet such deficit or extra amount. Such further assessment shall be apportioned, assessed, levied and collected as in the first instance, and on the same percentage or proportion.

2886. Assessments for benefits, how paid. [Ch. 109, '93.] § 22. All assessments for benefits under this act shall be upon the principle of benefits derived. The county shall pay one-fourth of the actual expense of constructing any well, and the lands to be benefited the other three-fourths in proportion to benefits derived as herein provided.

2887. Commissioners may reject bids and readvertise. [Ch. 109, '93.] § 23. The board of county commissioners shall have the right to reject any and all bids for the construction of any artesian well, and when no satisfactory bid is received, they may proceed to readvertise for bids. No payment shall be made to any person contracting to construct an artesian well under the provisions of this act, except as follows: One-third of the total amount to be paid for the work may be paid when one-third of the work is done; one-third of said amount may be paid when two-thirds of the work is completed; but the balance shall not be paid until said work be completed and approved and accepted as provided in section eleven (11) of this act.

2888. Papers and documents public records. [Ch. 109, '93.] § 24. All papers and documents herein required to be filed with the county auditor shall be kept in his office as a part of the public records of his county.

2889. Flow of water not to be obstructed. [Ch. 109, '93.] § 25. It is hereby made the duty of every person through whose land any natural water course extends on which an artesian well may be located as herein provided to keep the same open and unobstructed to the flow of water from such well. On failure so to do, any person aggrieved may complain to the overseer of highways in the district where such

obstruction is situated, and such overseer shall have the authority, and it is hereby made his duty to remove such obstruction and open said waterway, and the expense thereof shall be entered by the county auditor as a tax against said land.

2890. Railway companies to maintain culvert across roadbed. [Ch. 109, '93.] § 26. Whenever the roadbed or right of way of any railway company shall cross or intersect any natural water course on which an artesian well may be located in such manner as to obstruct or impede or change the course of the flow of the water therein it shall be the duty of such railway company, when notified by the county auditor so to do, to make and maintain the necessary opening through said roadbed for the unobstructed flow of water, and to build and maintain a culvert at such opening. Notice in writing to make such opening and to construct such culvert may be served on such company in the manner provided for the service of summons, at least thirty days before such railroad company shall become liable. In case such railway company shall refuse or neglect to comply with the provisions of this section, it shall be liable to a penalty of ten (10) dollars for each day's refusal or neglect to make such opening or to construct such culvert. The state's attorney of the county in which such railway company shall have refused or neglected to comply with the provisions of this section, shall upon complaint being made by any one damaged by such neglect or refusal, bring suit to collect such penalty or fine and it shall be his duty to prosecute the same to final determination in any court having competent jurisdiction.

2891. Duty of road overseer. [Ch. 109, '93.] § 27. It shall be the duty of the road overseer of any district in which a natural water course lies along which artesian water flows as provided in this act, to keep such water course situated on or across any public highway free and clear of all obstructions that would check or impede the flow of such water.

2892. Sheriff or coroner to act, when. [Ch. 109, '93.] § 28. In case the county surveyor shall be interested in the construction of any artesian well by reason of his owning land on the water course from such well, the sheriff of the county shall perform the duties prescribed herein, and in case the sheriff is interested the coroner shall act.

2893. Counties may unite. [Ch. 109, '93.] § 29. Whenever a water course is located in more than one county all counties thus interested may unite in securing the benefits of this act.

2894. Commissioners to levy tax for interest. [Ch. 109, '93.] § 30. The county commissioners shall at the time of the levy of the state and county tax, levy a sufficient amount to cover the interest on the

outstanding "artesian well warrants," and the amount coming due that year, as provided in sections seven (7) and fifteen (15) of this act.

2895. County surveyor to act, when. [Ch. 109, '93.] § 31. Should the office of engineer of irrigation become vacant, or if for any reason he cannot serve, the duties of said officer required in this act shall be performed by the county surveyor.

2896. Natural water courses declared public. [Ch. 109, '93.] § 32. All natural water courses in this state, whenever an artesian well is located thereon under the provisions of this act, are hereby created and declared public natural water courses for the flow of water from such artesian wells for the benefit of the public and of private individuals located on such water course, subject only to compensation for damages as in this act provided.

COSTS REPAID COUNTY,

2897. Cost and expenses, how paid. [Ch. 106, '95.] § 1. Any county which has, or may hereafter pay part of the costs of any artesian wells, is hereby authorized to assume entire control, for irrigation purposes only, of such portion of the flow of such artesian wells as the part paid by said county bears to the whole cost of such artesian wells.

2898. Rules and regulations. [Ch. 106, '95.] § 2. All artesian water controlled by any county under the provisions of this act shall be used under such rules, regulations and rentals as shall be prescribed by the boards of county commissioners of the several counties.

2899. Control of water, how disposed of. [Ch. 106, '95.] § 3. All water controlled under the provisions of this act may be disposed of at any regular or special meeting of the several boards of county commissioners.

TOWNSHIP SUPERVISION.

2900. Well to be under supervision of township. [Ch. 107, '95.] § 1. Whenever any artesian well has been accepted by any organized civil township said well shall then be under entire supervision and control of said township; provided, that such supervision and control shall in no manner interfere with the right of the county to use or lease the waters from such well to which it may be entitled.

2901. Petition for extensions. [Ch. 107, '95.] § 2. Before any extension or branches be made to any waterways from said well there shall be a petition presented to the township board of supervisors of said

township at any regular meeting of said board, signed by a majority of resident freeholders situated on said waterways, and if said board deem proper said petition may be granted.

2902. Penalty for obstructing. [Ch. 107, '95.] § 3. Any person or persons tapping or obstructing any of said waterways from said well shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five nor more than one hundred dollars.

LEASING ARTESIAN WATERS.

2903. Supervisors may fix the price per acre. [Ch. 108, '95.] § 1. After any artesian well has been completed and placed under control of a board of township supervisors, any person owning land in such township, desiring the use of water for irrigation purposes, may make to the board of supervisors of the township an application in writing, describing the tract to be irrigated and the number of acres to which water is to be applied, and stating that the applicant is willing to pay for the same a stated price per acre, to be fixed by said board of township supervisors.

2904. Supervisors may contract to furnish water — township to have lien upon crop. [Ch. 108, '95.] § 2. The said board of supervisors may enter upon a contract to furnish water to the said owner for the land described at a price per acre to be fixed in said contract, and such township shall have a lien upon the crops raised on said lands mentioned in said water contract for the amount of water rent remaining unpaid under the said contract, and may foreclose said liens upon the crops described in said contract.

2905. Township treasurer to collect water rent. [Ch. 108, '95.] § 3. It shall be the duty of the township treasurer to collect the water rents mentioned in this act and immediately pay the same to the county treasurer of the county, whose duty it shall be to credit the same to the artesian well fund.

STORAGE OF SURFACE WATERS.

2906. Waters appropriated. [Ch. 75, '97.] § 1. That all surface waters in the state of South Dakota are hereby appropriated to the use and benefit of the public.

2907. Duty of supervisors. [Ch. 75, '97.] § 2. The supervisors in each township shall construct dams across all draws, sloughs, ravines and other natural drains or water courses except permanent flowing creeks and rivers. The dams shall, as far as practicable, be constructed

on the section lines or public highways of the township and shall be built out of earth, straw or other practicable materials, and the dams shall be of such height and dimensions as to safeguard the surface water and prevent it from flowing over or around such dams; provided, that said supervisors may, if they deem it necessary for the protection of such dams in cases of floods, construct sluiceways, or other opening for the outflow of such surface waters. Said dams shall be at least twenty feet wide across the top, smooth and level, so that all kinds of vehicles including steam threshing machines can pass over them in safety.

2908. Consent of owner — damages. [Ch. 75, '97.] § 3. Before constructing any dam on private property, the board of township supervisors shall obtain consent of the owner of such property to construct the proposed dam, which consent shall be in writing and shall be filed with the town clerk of the township and preserved as other records are in his office. In case of refusal by such owner to give such consent, the supervisors shall appoint a person, the owner of such property another person, but if he neglects to do so for three days after written notice has been given him or his agent, then the supervisors shall appoint another person, and the two so appointed shall appoint a third person. Each person so appointed must be a citizen of the United States and a resident of the township. The three persons so appointed shall act as a jury to appraise all damages to the owner of the lands upon which dam is to be constructed. They shall first elect one of their number foreman, and then proceed to estimate all damages such dam is likely to cause the owner of the property. Such jury shall reduce their estimate to writing, and the foreman shall file said instrument with the clerk for the township in which said property is situated, together with a bill for their services for which they shall each receive the sum of two dollars per day. Said town clerk shall present said estimate for damages to the township board of supervisors at their next meeting after such appraisal. The supervisors shall then proceed to examine the estimate, and if they find that the damages are just and fair, they shall allow and pay the same in the same manner as other township bills are paid out of the general fund, but if they find that the estimate of the jury is excessive or unjust they shall reject it. If the owner of such property is dissatisfied with the findings of the jury or the allowance of the supervisors then he or she may bring suit against the township and the same shall be tried by a court of competent jurisdiction the same as other civil actions; provided, that if the owner of such private property does not live on the land or his address cannot be found by the board of supervisors after diligent search, then such supervisors shall build such dam without his or her

consent; provided, that the owner of the land may recover damages thereafter according to the above provisions; provided, that all suits for damages under this act shall be commenced in the county where such property is located within one year from the time that work is begun on such dam. In counties where the townships are unorganized it shall be the duty of the board of county commissioners to construct and maintain such dams and their duties shall be the same as the duties of the boards of supervisors in organized townships.

2909. Dams, when built. [Ch. 75, '97.] § 4. Such dams shall be built at such places on section line highways or private lands as in the judgment of the supervisors shall best preserve all the surface waters and prevent the same from escaping to the creeks and rivers and it shall be lawful to dam up all culverts and bridges that may now be built on any public highway, except such bridges as are built over living creeks, or any permanent flowing stream of water in this state, and said board of supervisors shall have the right to use all the road and bridge fund of their township if necessary for the construction of said dams.

2910. Duty of road overseer. [Ch. 75, '97.] § 5. The work of building such dams shall be under the immediate control and direction of the road overseer in the district where the same are to be constructed. The road overseer shall have the right to warn out all resident inhabitants of his district to perform labor on the construction of said dams the same as is now provided for working the roads, and with like effect, and each resident for such district shall receive the same pay as for working roads, and the receipt for such labor signed by the overseer shall be accepted in lieu of road tax.

2911. Dams, where begun. [Ch. 75, '97.] § 6. The respective officers may begin building dams at the source or upper end of the smaller water course first, then at the upper end of the next larger ravines. All dams built on township lines shall be under the sole supervision and direction of the supervisors of the township through which such water flows before it gets to the dam.

2912. Duty of township supervisors. [Ch. 75, '95.] § 7. After the construction of said dams it shall be the duty of the township supervisors, through the road overseers of the township, to keep said dams in a good state of repair by planting native willows and other vegetation on the sides of such dams, and do anything which in their judgment seems best to effectively prevent the water from washing the dam away, but all such work shall be called road work and be paid for at the regular rate out of the road and bridge fund of the township in which such dam is constructed, and any person who shall interfere with the

construction of said dams, or shall tear down or destroy the same in any manner, so as to render them unfit for the purpose intended, shall be guilty of a misdemeanor and upon conviction shall be fined not more than two hundred dollars nor less than twenty-five dollars, or be imprisoned in the county jail not more than ninety days nor less than ten days, or by both such fine and imprisonment.

2913. Act mandatory. [Ch. 75, '97.] § 8. The provisions of this act shall be mandatory upon road overseers, supervisors, county commissioners and all others interested, and they are hereby required to begin the construction of said dams on or before the first day of June, eighteen hundred and ninety-seven, and the work of building said dams shall proceed with all reasonable dispatch to the end that the waters accumulating from the melting snows or spring rains may be stored and preserved for the use of the public.

2914. Penalty for neglect. [Ch. 75, '97.] § 9. Any person who shall neglect or refuse to do his duty under the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum not more than twenty dollars nor less than five dollars, or be imprisoned in the county jail not more than ten days nor less than five days, or by both such fine and imprisonment for each and every offense.

2915. Law take effect, when. [Ch. 75, '97.] § 10. Provided, that the law shall take effect only in such counties as shall adopt it by a majority vote at any election.

2916. Petition. [Ch. 75, '97.] § 11. A petition to vote upon the adoption of the storage act, signed by at least thirty of the legal voters of any county, shall be presented to the county commissioners of the county at least thirty days before any election in and for said county.

2917. Petition — ballots. [Ch. 75, '97.] § 12. All persons voting at any election for or against the water storage act shall have written or printed on their ballots "for the storage of water" also "against the storage of water," and if a majority of the votes cast in such county are "for the storage of water" the law shall at once take effect and be put in force by the construction of dams, et cetera, and if a majority vote is "against the storage of water" then the law shall be of no effect in such county.

CONSTRUCTION OF DAMS.

2918. Surplus water appropriated. [Ch. 77, '97.] § 1. All surplus water above the normal amount in lakes, rivers, creeks or other bodies of water, is hereby appropriated to the use and benefit of the people of this state.

2919. Petition — duty of commissioners. [Ch. 77, '97.] § 2. The board of county commissioners in any county in the state of South Dakota shall upon a petition signed by a majority of the legal voters of such county, to be determined by the poll books in the office of the auditor of said county, proceed to build dams across streams, to cut ditches and otherwise prepare to, and to store all surplus water as described in section one of this act.

2920. Damages. [Ch. 77, '97.] § 3. Any damage arising to adjacent property shall be settled in the manner prescribed by law for settling similar damages.

RESERVOIRS FOR IRRIGATION.

2921. Who may construct. [Ch. 104, '95; ch. 110, '93.] § 1. It shall be lawful for any person, company or corporation to construct and maintain, or permit to be constructed and maintained, a dam or dams upon and adjacent to their own lands, in any of the natural streams of the state and to take from said streams any unappropriated water not needed for immediate use, for domestic and irrigating purposes, and also to construct and maintain, or permit to be constructed and maintained, reservoirs for the purpose of storing water, taken from said streams to be used for irrigating agricultural lands; and to construct and maintain ditches, sluiceways or waterways for carrying such water to and from such streams, or to and from such reservoirs and to construct and maintain water wheels and machinery to be propelled by the waters of such stream or otherwise for the purpose of raising the water therefrom for the aforesaid purposes, or to keep, maintain and use other machinery and appliances for like purposes; provided, that no dam shall be built or constructed so as to cause the waters of such stream to flow out of the natural channel or banks of such stream at its ordinary stage, and the party damaging or injuring the lands or possessions of another by reason of such dams or reservoirs shall be liable to the party so injured for the actual damage occasioned thereby.

2922. Surveys — field notes, where filed. [Ch. 104, '95; ch. 110, '93.] § 2. That before any dam shall be constructed under the provisions of this act it shall be the duty of such person, company or corporation to cause a proper survey to be made by a competent engineer and to determine the height to which such dam may be built and to determine the extent of the flow of the water by reason of such dam, and to determine as near as may be what lands, if any, whether above or below the locality of such dam will be in any manner affected by reason of

such dam, and all persons owning lands along such streams in any manner affected or to be affected by such dam, shall have notice of the intention of such person, company or corporation to construct such dam; and all field notes, profiles and plates of such survey, or copies thereof, shall be filed in the office of the register of deeds for the county in which said lands are situated.

2923. Damages, how ascertained — owner of ditches to provide suitable bridges. [Ch. 104, '95; ch. 110, '93.] § 3. If such person, company or corporation and the owner or owners of such lands cannot agree as to the amount of damages, proceedings shall be instituted to ascertain the damages sustained by such owner or owners by a jury in the manner and as provided by sections six, seven and eight of chapter one hundred and three of the session laws of eighteen hundred and ninety and with the right of appeal as therein provided; provided, that when the parties agree, the agreement shall be in writing and acknowledged as conveyances of real estate are required to be, and such agreement so acknowledged and any judgment rendered in condemnation proceedings may be recorded as conveyances of real estate are recorded in the county where the lands and premises are situated; provided, further, that if it shall be necessary to cross the lands of others with any ditch, sluice or waterway the damages therefor shall be settled by agreement, or by condemnation proceedings as above set forth, and if any highway is crossed by such ditch, sluice or waterway, the person, company or corporation constructing the same shall provide and maintain in good repair all suitable and necessary bridges at their own expense, and if they shall fail to provide the same within a reasonable time the township wherein the same are situated may provide such bridges as may be needed at the expense of such person, company or corporation to be recovered in a proper action in the name of such township.

2924. Height of embankment limited. [Ch. 104, '95; ch. 110, '93.] § 4. No reservoir with embankments or dam exceeding fifteen feet in height shall be constructed without first submitting the plans thereof to, and obtaining the approval of, the board of county commissioners of the county in which such reservoir is situated.

2925. Dams not to conflict. [Ch. 104, '95; ch. 110, '93.] § 5. No dam shall be located or constructed so as to impair the usefulness and efficiency of other dams now constructed and maintained or that may be hereafter constructed under this act and in making the surveys for the location of dams under the provisions of this act due regard shall be had to all the dams then constructed and maintained or located, so that the several dams upon any stream may be so located and constructed as not to materially interfere with each other.

CHAPTER 22. POLICE OF THE STATE.

ARTICLE 1. SETTLEMENT AND SUPPORT OF THE POOR.

GENERAL PROVISIONS.

2926. County commissioners — overseers of poor. The county commissioners of the several counties of this state shall be the overseers of the poor within their several counties, and shall perform all the duties with reference to the poor within their respective counties that may be prescribed by law. Every board of county commissioners shall, in discharging the duties imposed by this act, be designated as overseers of the poor. [C. L. 2141.]

2927. Suits in name of county. 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. [C. L. 2142.]

2928. Every county to relieve its poor. 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 section twenty-one hundred and fifty-eight provided. [C. L. 2143.]

No legal duty is imposed upon county to provide relief for indigent person, although having settlement therein, while without the county. *Hamlin County v. Clark County*, 1 S. D. 131; 45 N. W. Rep. 329.

Simply removing a person affected with small pox, who is not in indigent circumstances, to a county pest house by order of the county commissioners will not render him a pauper, and he may be held liable for medicines and medical services rendered him by the county physician, when he accepts the services without objection and receives the benefit thereof. *Ostland v. Porter*, 4 Dak. 98; 25 N. W. Rep. 731.

2929. Legal settlements acquired, how. 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:

1. A married woman shall always follow and have the settlement of her husband if he have any within the state, 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.

2. Legitimate children shall follow and have the settlement of their father if he have any within the state, until they shall gain a settle-

ment 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.

3. Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she then have any within this state; 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.

4. Every male person and every unmarried female over the age of twenty-one years, who shall have resided in any county in this state ninety days, shall thereby gain a settlement in such county.

5. Every minor whose parents, and every married woman whose husband, has no settlement in this state, who shall have resided ninety days in any county in this state, shall thereby gain a settlement in such county.

6. 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 where his or her master or mistress has a settlement.

7. Every settlement when once legally acquired shall continue until it shall be lost or defeated by acquiring a new one in this state, or by wilful 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 wilful absence, all former settlements 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 heretofore as after. [C. L. 2144.]

2930. Overseers have care of poor. 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. [C. L. 2145.]

2931. Duty of overseers — proposals for care of poor. 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 April 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, an 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 at their regular meeting beginning on the said first Monday in April: but nothing herein contained shall prohibit any overseers of the poor from receiving and accepting propositions at any

time for the keeping of 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. [C. L. 2146.]

2932. Allowance for support of poor. 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 benefited 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. [C. L. 2147.]

2933. Duty of overseers. 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 necessities 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. [C. L. 2148.]

2934. Poor book. 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. [C. L. 2149.]

2935. Appeal to circuit judge. 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 the circuit court of the county or judicial subdivision 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. [C. L. 2150.]

2936. When settlement is uncertain. 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. [C. L. 2151.]

2937. Temporary relief to certain poor. 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 [C. L. 2152.]

2938. Warrant of removal issued by justice. 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 overseers, 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 cannot be removed, such person shall be relieved by said overseers whenever such relief is needed. [C. L. 2153.]

2939. Appeal by overseers. If the overseers of the poor of any county in this state, 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 district court of the county or judicial subdivision 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. [C. L. 2154.]

2940. Hearing of appeal. 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 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. [C. L. 2155.]

2941. Order of removal defective. 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. [C. L. 2156.]

2942. Removal — duty of overseers. If any person be removed by virtue of the provisions of this chapter, from any county to any other

place within this state, by warrant or order under the hand 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. [C. L. 2157.]

2943. Return to clerk. 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. [C. L. 2158.]

2944. Pay of overseers. The overseers of the poor in each county 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. [C. L. 2159.]

2945. To submit accounts, when. 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. [C. L. 2160.]

2946. Non-resident sick or dying within county. 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 have money or 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. [C. L. 2161.]

It is the duty of a county to provide for indigent person having settlement in another county while therein and it cannot maintain action against county wherein such settlement is held for reimbursement therefor. *Hamlin County v. Clark County*, 1 S. D. 131; 45 N. W. Rep. 329.

SEED GRAIN FURNISHED BY COUNTIES.

2947. Application, by whom made. [Ch. 167, '95.] § 1. If any person in a duly organized county in this state, being the owner or lessee and in the possession of any cultivated farm land, is unable by reason of the failure of crops upon said land, and is without the means to procure seed grain for its cultivation, the board of commissioners of such county, upon the application of such person, may, if in the opinion of such board the seeding of such land cannot be done without the assistance of such board, furnish such person with seed grain for the purpose of seeding such land upon the conditions and limitations as hereinafter set forth.

2948. Application, what to contain. [Ch. 167, '95.] § 2. Any person desiring the aid of the board of county commissioners in procuring seed grain under the provisions of this act, shall file an application with the board of commissioners, signed and sworn to by such applicant, setting forth a full and complete description of the land, section and subdivision of sections, township and range, which said applicant desires to crop the ensuing season, accurately describing the number of acres and where situated that he proposes to crop to each kind of grain, and the kind and quantity of seed grain desired to seed the same, together with a statement of his inability to procure the seed necessary to crop such land, and the cause of such inability, and in all counties organized into civil townships such application shall, as a condition precedent to its consideration by the county board, be certified to as correct by the chairman of the township board of supervisors where such land is situated, and the signature of such chairman shall be attested by the town clerk of such township, and in all counties not organized into civil townships, such application shall be certified to as being correct by three reputable freeholders residing in the immediate vicinity of such land.

2949. Amount of grain furnished. [Ch. 167, '95.] § 3. Upon the filing with the county board an application complying in all respects with the requirements of the preceding section, the board may provide for and furnish such applicant of seed wheat not to exceed fifty bushels, of seed oats not to exceed fifty bushels, of barley not to exceed twenty bushels and of seed corn not to exceed four bushels; provided, in case the applicant shall desire more of a certain kind of grain than above specified, the board may furnish the same to such applicant, but shall not furnish any applicant seed grain exceeding in value the aggregate value of the seed grain as above enumerated.

2950. Note and mortgage — conditions of — lien upon crops. [Ch. 167, '95.] § 4. Whenever any seed grain is furnished, and before the delivery thereof to any applicant under the provisions of this act, such applicant shall make, execute and deliver his note to such county for the value thereof, with eight per centum interest, due on or before the first day of October thereafter, payable at the office of the county treasurer, and make and execute his chattel mortgage on all crops raised from the seed grain so furnished, to secure the same, in which mortgage it shall appear that the consideration of the note secured was for seed grain furnished by such county, the kind and number of bushels received, and an accurate description of the land upon which each kind of grain will be sown or planted, that the seed so obtained will be sown or planted and the crop therefrom harvested, threshed and cared for in a good, workmanlike manner, and that he will deliver to the county a sufficient amount of grain, raised from the seed so sown, at the place where designated in said mortgage, on or before the first day of October thereafter to pay such note, unless the note has been previously paid. And it is herein expressly provided, that such mortgage shall be a first lien upon all crops raised upon such land for the payment of such note, and the board is hereby authorized to take such other and further security as they may deem best, and each and every county board shall appoint some person to look after the interests of the county and to take such measures as may be necessary to enforce the provisions of this section and secure the payment of the notes taken.

2951. Misrepresentation — penalty. [Ch. 167, '95.] § 5. Any person who shall by any false or fraudulent representation obtain any seed grain under the provisions of this act, or shall use the same or any part thereof for a different purpose than that for which it was obtained, or shall neglect to properly sow or plant the same, or to properly and in a good, husbandmanlike manner cultivate, harvest, thresh and store the crop from such seed, shall be deemed guilty of a misdemeanor; and any person who shall assign, sell or dispose of any portion of such crop to any person other than the county before the payment of his note for such seed grain, shall be deemed guilty of a felony, and subject to the penalties prescribed in the statutes of South Dakota for misdemeanors and felonies not otherwise specifically provided for.

2952. Duty of state's attorney. [Ch. 167, '95.] § 6. It shall be the duty of the state's attorneys in their respective counties, to prosecute all offenses arising under the provisions of this act, and in case of the wilful neglect or refusal of any state's attorney to prosecute any and all such offenses arising under his jurisdiction, he shall forfeit and pay into the county treasury for the benefit of the county, the sum of one hundred dollars for each and every offense.

2953. Duty of county commissioners. [Ch. 114, '97; ch. 167, '95.] § 7. In providing such seed grain for the persons applying and in the manner provided in this act, it shall be lawful for such county commissioners to purchase the seed grain required for their respective counties and to contract for the delivery of the same in such quantities as required and by them deemed proper and at such places within their counties as they may deem most convenient for handling and distribution; and may order warrants drawn on the general fund of the county to pay for the seed grain so purchased and furnished, or may create a seed grain fund, and in the event of the creation of such fund, the moneys received by the county in payment for seed grain furnished shall be paid into such seed grain fund; provided, that in furnishing such seed grain they shall not authorize the issuing of warrants which shall in the aggregate exceed one per centum of the last annual assessed valuation of such county; and provided further, that when any warrant which shall have been heretofore or may be hereafter so issued on the seed grain fund is for want of money in said fund unpaid and remains outstanding for a period of one year or more from its date, it shall be the duty of the county commissioners, issuing seed grain fund warrants to call in such seed grain fund warrants so outstanding and unpaid, and to issue in lieu thereof warrants drawn on the general fund of such county for the full amount due, including interest on such unpaid and outstanding seed grain fund warrants.

2954. Provisions of this act applicable to civil townships. [Ch. 167, '95.] § 8. Whereas, if any board of county commissioners of any county, organized or partially organized into civil townships, shall neglect or refuse to furnish seed grain under the provisions of this act, the board of township supervisors of such civil townships in said county shall have the same power to furnish seed grain in their respective townships as this act confers upon boards of county commissioners, and all the provisions of this act as to the manner of procuring, issuing warrants and furnishing seed grain by boards of county commissioners as well as all provisions relating to a seed grain fund are hereby made applicable to the boards of township supervisors in their respective townships, except that applications for seed grain shall be made to the board of township supervisors, and all notes given for seed grain shall be made payable to the treasurer of the township; further, that it shall be the duty of such treasurer of said townships to look after and force collection on all such notes as he may deem necessary at any time after such grain is harvested and threshed, and the board of township supervisors shall have power to issue warrants not to exceed three (3) per centum of the last assessed valuation for the purchase of seed grain.

ASYLUM AND POOR FARM.

2955. Special election. It shall be lawful for the board of county commissioners in the several counties of this state, 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. [C. L. 2162.]

2956. Duty of superintendent. 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 state. [C. L. 2163.]

2957. Appoint physician. 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. [C. L. 2164.]

2958. Bind out poor children. 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. [C. L. 2165.]

2959. Tax assessed for purchase of poor farm. 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-one hundred and sixty-two, and a majority of all the votes cast at said poll be in favor of such assessment. [C. L. 2166.]

2960. All poor go to the asylum. 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. [C. L. 2167.]

2961. Bond of superintendent. 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. [C. L. 2168.]

2962. Children to be educated. 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. [C. L. 2169.]

2963. Superintendence of education of children. It 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 continuance of its session. [C. L. 2170.]

2964. Discontinuance of asylum. 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 interest of the county. [C. L. 2171.]

2965. Levy of poor tax. The board of county commissioners may, in the several counties, 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. [C. L. 2172.]

2966. Appeals from justice's court. 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. [C. L. 2173.]

2967. Board appoint visitors. The board of county commissioners 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. [C. L. 2174.]

2968. Compensation. Such visitors shall receive such compensation as the said board may adjudge reasonable. [C. L. 2175.]

2969. Unlawful to transport pauper. 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 state, except in the manner provided for in this chapter. [C. L. 2176.]

2970. Penalty. Any person who shall violate the provisions of the preceding section 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. [C. L. 2177.]

2971. Penalty for bringing into the county. Every person who shall bring into and leave any pauper in any county wherein such pauper is not lawfully settled, knowing such person to be a pauper, shall forfeit and pay the sum of one hundred dollars for every such offense; to be

sued for and recovered by and to the use of such county, by an action in the name of the county; and no property shall be exempt from seizure and sale in such cases; and it shall be the duty of the board of county commissioners of the several counties to institute suits for all violations of this section; and any such sum when collected shall be paid into the county treasury for the use of the county. [C. L. 2178.]

ARTICLE 2. OF CARE OF THE INSANE.

EXAMINATION OF PATIENTS.

2972. Appointment of commissioners of insanity. In each organized county of this state there shall be a board of commissioners, consisting of three persons, to be styled commissioners of insanity, two of whom shall constitute a quorum. The judge of the county court shall be a member of said board and its chairman. The other two members shall be appointed by the board of county commissioners, one of whom shall be a respectable practicing physician, and the other a respectable practicing attorney; and appointments shall be made of persons residing as near as may be to the county seat. Immediately on the taking effect of this act these appointments shall be made as provided in this section. One of these commissioners shall be appointed for one year, the other for two years. The appointment of successors may be made at any time within three months prior to the expiration of the term of the incumbent, who shall hold his office until his successor shall be appointed and qualify. In case of the temporary absence or inability to act of two of the commissioners, the county judge shall call to his aid a respectable practicing physician or lawyer, who, after qualifying as in other cases, may act in the same capacity. The record in such cases must show the fact of such absence. [C. L. 2179.]

2973. Oath of commissioners — organization and meetings. Before entering upon the duties of their office the persons so appointed shall take and subscribe an oath or affirmation to support the constitution of the United States, and the constitution of the state of South Dakota, and to faithfully discharge their duties according to law as such commissioners, which obligation shall be filed with the clerk of said board, who shall enter a memorandum thereof on the records. On organizing they shall choose one of their number clerk of said board. They shall hold their meetings for business at the office of the county judge, unless for good reasons they shall fix on some other place. If they deem it necessary or advisable, they may hold sessions at such regular times as they may fix. They shall also meet on notice from the chairman of the board. [C. L. 2180.]

2974. Duties of chairman — records — notices. The chairman of the board shall sign and give or issue all notices, appointments, warrants, subpoenas or other process required to be given or issued by the commissioners, affixing thereto his official seal as judge of probate. He shall file and carefully preserve in his office all papers connected with any inquest by the commissioners, and properly belonging to his office, with all notices, reports and other communications. He shall keep separate books in which to minute the proceedings of the board, and his entries shall be sufficiently full to show, with the papers filed, a complete record of their findings, orders and transactions. The notices, reports and communications herein required to be given or made, may be sent by mail, unless otherwise expressed or implied, and the fact and date of such sending and of their reception must be noted on the proper record. [C. L. 2181.]

2975. Duties and powers of commissioners. The said commissioners shall have cognizance of all applications for admission to the hospital or for the safe keeping otherwise of insane persons within their respective counties, except in cases otherwise specially provided for. For the purpose of discharging the duties required of them they shall have power to issue subpoenas and compel obedience thereto, to administer oaths, and do any act of court necessary and proper in the premises. [C. L. 2182.]

2976. Applications for admission. Application for admission to the hospital must be made in writing in the nature of an information verified by affidavit. Such information must allege that the person on whose behalf the application is made is believed by the informant to be insane and a fit subject for custody and treatment in the hospital; that such person is found in the county and has a legal settlement therein, if such is known to be the fact; and if such settlement is not in the county, where it is, if known, or where it is believed to be, if the informant is advised on the subject. [C. L. 2183.]

2977. Investigations as to insanity. On the filing of an information as above provided, the commissioners shall at once take steps to investigate the grounds of the information. For this purpose they may require that the person for whom such admission is sought be brought before them, and that the examination be had in his or her presence, and they may issue their warrant therefor and provide for the suitable custody of such person until their investigation shall be concluded. Such warrant may be executed by the sheriff or any constable in the county, or if they shall be of opinion from such preliminary inquiries as they shall make, and in making which they shall take the testimony of the informant if they deem necessary or desirable, and of

other witnesses if offered, that such course would probably be injurious to such person, or attended with no advantages, they may dispense with such presence. In their examination they shall hear testimony for and against such application, if any is offered. Any citizen of the county, or any relative of the person alleged to be insane, may appear and resist the application, and the parties may appear by counsel if they elect. The commissioners, whether they decide to dispense with the presence before them of such person or not, shall appoint some regular practicing physician of the county to visit or see such person and make a personal examination touching the truth of the allegation in the information, and touching the actual condition of such person, and forthwith report to them thereon. Such physician may or may not be of their own number, and the physician so appointed and acting shall certify under his own hand that he has, in pursuance of his appointment, made a careful personal examination as required, and that on such examination he finds the person in question insane, if such be the fact, and if otherwise, not insane; and in connection with his examination the said physician shall endeavor to obtain from the relative of the person in question or from others who know the facts, correct answers, so far as may be, to the interrogatories hereinafter required to be propounded in such cases, which interrogations and answers shall be attached to his certificate. [C. L. 2184.]

2978. How patient shall be sent to hospital. On the return of the physician's certificate the commissioners shall as soon as practicable conclude their investigations, and having done so they shall find whether the person alleged to be insane is insane; whether, if insane, a fit subject for treatment and custody in the hospital; whether the legal settlement of such person is in their county, and if not in their county, where it is, if ascertained. If they find such person is not insane, they shall order his or her discharge if in custody. If they find such person insane, and a fit subject for treatment and custody in the hospital, they shall forthwith issue their warrant and a duplicate thereof, stating such finding with the settlement of the person, if found; and if not found, their information, if any, in regard thereto, authorizing the superintendent of the hospital to receive and keep such person as a patient therein. Such warrant and duplicate, with the finding and certificate of the physician, shall be delivered to the sheriff of the county, who shall execute the same by conveying such person to the hospital, and delivering him or her, with such duplicate and physician's certificate and finding, to the superintendent thereof. The superintendent, over his official signature, shall acknowledge such delivery on the original warrant, which the sheriff shall return to the clerk of the commissioners with his cost and expenses indorsed thereon. If neither

the sheriff nor his deputy is at hand, or if both are otherwise engaged, the commissioners may appoint some other suitable person to execute the warrant in his stead, who shall take and subscribe an oath or affirmation faithfully to discharge his duty, and shall be entitled to the same fees as the sheriff. The sheriff or any other person so appointed may take to his aid such assistance as he may need to execute such warrant; but no female person shall thus be taken to the hospital without the attendance of some other female, or some relative of such person. The superintendent in his acknowledgment of delivery must state whether there was any such person in attendance, and give the name or names if any. It is, however, hereby provided that if any relative or intimate friend of the patient, who is a suitable person, shall so request, he shall have the privilege of taking and executing such warrant, in preference to the sheriff or any other person, and without taking such oath or affirmation, and for so doing he shall be entitled to his necessary expenses, but no fees. [C. L. 2185.]

(See 2922 et seq.)

2979. When accommodations of asylum are insufficient — disposition of insane. If in the case of any persons found to be insane and fit subjects for custody and treatment in the hospital as above provided, it shall be shown to the satisfaction of the commissioners that they cannot at once be admitted therein, and they cannot with safety be allowed to go at liberty, the commissioners shall require that such patient shall be suitably provided for otherwise until such admission can be had, or until the occasion therefor no longer exists. Such patients may be cared for either as public or private patients. Those shall be treated as private patients whose relatives or friends will obligate themselves to take care of and provide for them without public charge. In the case of any one treated as a private patient, the commissioners shall appoint some suitable person a special custodian, who shall have authority and whose duty it shall be in all suitable ways to restrain, protect and care for such patient in such manner as to best secure his or her safety and comfort, and in such manner as to best protect the persons and property of others. In the case of public patients the commissioners shall require that they be in like manner restrained, protected and cared for by the commissioners of the county or overseers of the poor, at the expense of the county, and they may accordingly issue their warrants to such commissioners of the county or overseers of the poor, who shall forthwith comply with the same. If there is no poor house for the reception of such patients, or if no more suitable place can be found, they may be confined in the county jail in charge of the sheriff. Or said commissioners in their discretion may require

that such patients be taken to the asylum of any state that may be designated by the governor, who is hereby authorized and empowered to make the best terms he can with the authorities of any asylum in any state for the admission of such patient or patients. [C. L. 2186.]

2980. Cared for by county. On application to the commissioners, on behalf of persons alleged to be insane, and whose admission to the hospital is not sought, made substantially in the manner above prescribed and asking that provisions be made for their care as insane, either public or private, within the county, and on proof of their insanity and need of care as above pointed out, the commissioners may provide for their care, protection and restraint as in the case of other applications. [C. L. 2187.]

2981. Insane person suffering for proper care. On information laid before the commissioners of any county that a certain insane person in the county is suffering for want of proper care, they shall forthwith inquire into the matter, and if they find the information well founded they shall make all needful provision for the care of such person as provided in other cases. [C. L. 2188.]

2982. Not to be restrained of liberty without authority. No person supposed to be insane shall be restrained of his or her liberty by any other person otherwise than in pursuance of authority obtained as herein required, excepting to such extent and such brief period as may be necessary for the safety of persons and property until such authority can be obtained. [C. L. 2189.]

2983. Penalty for cruelty to insane. Any person having care of an insane person, and restraining such person, either with or without authority, who shall treat such person with wanton severity, harshness or cruelty, or shall in any way abuse such person, shall be guilty of a misdemeanor, besides being liable to an action for damages. [C. L. 2190.]

2984. Insane under county care may be transferred. Insane persons who shall have been under care, either as public or private patients, outside of the hospital, by authority of the commissioners of any county, may on application to that effect be transferred to the hospital whenever they can be admitted thereto, on the warrant of such commissioners. Such admission may be had without another inquest at any time within six months after the inquest already had, unless the commissioners shall deem further inquest advisable. [C. L. 2191.]

2985. Questions to be answered on application for admission. In each case of application for admission to the hospital, correct answers to the

following interrogations, so far as they can be obtained, shall accompany the physician's certificate; and if on further examination, after the answers are stated, any of them are found to be erroneous, the commissioners shall cause them to be corrected:

1. What is the patient's name? Married or single? If any children, how many? Age of youngest child, and age of patient?
2. Where was the patient born?
3. Where is his or her place of residence?
4. What has been the patient's occupation?
5. Is this the first attack? If not, when did others occur and what was their duration?
6. When were the first symptoms of this attack manifested, and in what way?
7. Does the disease appear to be increasing, decreasing or stationary?
8. Is the disease variable, and are there rational intervals? If so, do they occur at regular periods?
9. On what subject or in what way is derangement now manifested? State fully.
10. Has the patient shown any disposition to injure others?
11. Has suicide ever been attempted? If so, in what way? Is the propensity now active?
12. Is there a disposition to filthy habits, destruction of clothing, breaking glass, et cetera?
13. What relatives, including grandparents and cousins, have been insane?
14. Did the patient manifest any peculiarities of temper, habits, disposition or pursuits before the accession of the disease? Any predominant passion, religious impressions, et cetera?
15. Has the patient been subject to any bodily disease, epilepsy, suppressed eruptions, discharges of sores, or ever had an injury of the head?
16. Was the patient ever addicted to intemperance in any form?
17. Has restraint or confinement been employed? If so, what kind and how long?
18. What is supposed to be the cause of the disease?
19. What treatment has been pursued for the relief of the patient? Mention particulars and the effect.
20. State any other matter supposed to have any bearing on the case. [C. L. 2192.]

2986. Proceedings for release of persons wrongfully held. On a statement in writing, verified by affidavit, addressed to the county judge of the county in which the hospital is situated, or of the county in which

any certain person confined in the hospital has his or her legal settlement, alleging that such person is not insane and is unjustly deprived of his or her liberty, such judge shall appoint a commission of not more than three persons, in his discretion, to inquire into the merits of the case, one of whom shall be a physician; and if two or more are appointed, another shall be an attorney. Without first summoning the party to meet them, they shall proceed to the hospital and have a personal interview with such person, so managed as to prevent him or her, if possible, from suspecting its object; and they shall make any inquiries and examinations they may deem necessary and proper of the officers and records of the hospital, touching the merits of the case. If they shall deem it prudent and advisable they may disclose to the party the object of their visit, and in the presence of such party make further investigation of the matter. They shall forthwith report to the county judge making the appointment, the result of their examinations and inquiries. Such report shall be accompanied by a statement of the case and signed by the superintendent. If on such report and statement and the hearing of the testimony, if any is offered, the county judge shall find the person not insane, he shall order his or her discharge. If on the contrary, he shall so state, and authorize his or her continued detention. The finding and order of the judge of probate, with the report and other papers, shall be filed in his office and entered on his records, and he shall forthwith notify the superintendent of his finding and order, and the superintendent shall carry out the order. The commissioners appointed as provided in this section shall be entitled to their necessary expenses, and a reasonable compensation to be allowed by said judge of probate, and paid by the territory out of any funds not otherwise appropriated; provided, that the applicant shall pay the same if the judge shall find that the application was made without probable grounds, and shall so order. [C. L. 2193.]

2987. Not to be repeated. The commission so provided for shall not be repeated oftener than once in six months in regard to the same party, nor shall such commission be appointed in case of any patient within six months of the time of his or her admission. [C. L. 2194.]

2988. Habeas corpus. All persons confined as insane shall be entitled to the benefit of the writ of habeas corpus, and the question of insanity shall be decided at the hearing, and if the judge or court shall decide that the person is insane, such decision shall be no bar to the issuing of the writ the second time, whenever it shall be alleged that such person has been restored to reason. [C. L. 2195.]

2989. Salaries and fees, how and by whom paid. The commissioners of insanity shall be allowed at the rate of two dollars per day each for

all the time actually employed in the duties of their office. The county judge in addition to what he is entitled to as commissioner of insanity, shall be allowed one-half as much more for making the required record entries in all cases of inquest, and of meetings of the board for any purpose, and for the filing of any papers required to be filed. He shall also be allowed twenty-five cents for such notice or process given or issued under seal, as herein required. The examining physician shall be entitled to five dollars for each case examined, and mileage at the rate of ten cents per mile each way. The sheriff shall be allowed for other service [than conveying a patient to the hospital and returning therefrom] the same fees as for like services in other cases. Witnesses shall be entitled to the same fees as witnesses in the district court. The compensation and expenses provided for above shall be allowed and paid out of the county treasury in the usual manner, except those of sheriff, which shall be paid out of the state treasury in the usual manner. [C. L. 2196.]

2990. Penalty for neglect of duty. Any officer required as herein to perform an act, and any person accepting an appointment under the provisions of this act, and wilfully refusing or neglecting to perform his duty as herein prescribed, shall be guilty of a misdemeanor, besides being liable to an action for damages. [C. L. 2197.]

2991. Term "insane" and "idiot" defined. The term "insane" as used in this act includes any species of insanity or mental derangement. The term "idiot" is restricted to persons supposed to be naturally without mind. No idiot shall be admitted into the hospital for insane. [C. L. 2198.]

EXPENSE OF CONVEYING INSANE.

2992. Attendant furnished by whom. [Ch. 78, '91.] § 1. Whenever a person shall, by the competent authority provided by the laws of this state, be adjudged insane, it shall be the duty of the county judge of the county in which such person is so adjudged, to notify the superintendent of the hospital for the insane, and in case it shall be determined to receive such person so adjudged insane into such hospital for the insane for care and treatment, the said superintendent of the hospital for the insane shall forthwith send a suitable person from among the employes of the hospital for the insane, who has had experience in the care of insane persons, to such county seat of such county in which such person so adjudged insane resides or is held, which said employe so sent shall act as attendant for and shall take charge of such insane person, while en route to the hospital for the insane. If it shall be determined by such employe, attendant and the county judge that help

is necessary in conveying such insane person to the hospital for the insane, then and in that case the said judge shall appoint a suitable person to assist such employe or attendant in so conveying such insane person to the hospital for the insane, and the expenses of such assistant attendant shall be paid by the state. The assistant attendant shall receive as pay the sum of two (2) dollars per day for each day actually spent in the performance of the duty imposed upon him. The employe attendant sent or detailed by the superintendent of the hospital for the insane shall receive no pay for these services specially, and the expenses of his trip shall be charged up as incidental expenses of the hospital for the insane, and a record of the expenses in each case shall be preserved and reported as in case of other special expenses. The assistant attendant shall receive a certificate from the superintendent of the hospital for the insane as to the fact that he so acted as such assistant in such case, and shall by affidavit submit a statement of his expenses incurred in making such trip to the hospital for the insane and return, which said statement shall be verified by receipt for all moneys expended together with the amount of his per diem allowed by this act, shall by the county judge be certified to the state auditor, who shall approve the same, if correct, and issue an order or warrant on the state treasurer for the amount so audited.

2993. Expenses advanced by county treasurer. [Ch. 78, '91.] § 2. The expenses of such insane person and the assistant attendant, if any be employed, including railroad fare, stage fare and other necessary expenses incurred while en route to the hospital for the insane shall be advanced by the treasurer of the county in which such person is so adjudged insane upon the order of the commissioners of insanity of such county, and the amount of such expenses so incurred shall on the proper certificate from the county judge be audited by the state auditor and paid by the state treasurer as hereinafter provided.

2994. Expenses, how paid. [Ch. 78, '91.] § 3. All bills of expense connected with the conveyance of insane persons to the hospital for the insane shall be made in writing, fully itemized, with vouchers for all moneys expended and verified by the oath of the person having charge of the insane person, and accompanied by the receipt of the superintendent of the hospital for the insane for the delivery of such insane person, and when approved by the proper authority shall be paid out of the state treasury. When the commissioners of insanity order the return of a patient, compensation and expense shall in like manner be paid out of the state treasury.

2995. Relative may take charge of insane person. [Ch. 78, '91.] § 4. Whenever any relative or member of the family of the person

so adjudged insane may desire to take charge of the conveying such person to the hospital for the insane it shall be lawful for the county judge to authorize such relative or member of the family of the insane person to take charge of such person in conveying him or her to the hospital for the insane; provided, that in the judgment of said county judge such relative or member of the family be a competent person for that purpose; and provided, further, that it shall be determined by the said county judge that such insane person can with safety be intrusted to the care of such relative while en route. The superintendent of the hospital for the insane shall receipt and certify to the person delivering such insane person in the same manner as in other cases when insane persons are received. Such relative or member of the family shall be entitled to receive pay for the necessary expenses of the trip, which shall be certified in manner provided in sections two (2) and three (3) of this act, in cases of attendants or assistant attendants.

2996. Expense of care of insane. [Ch. 79, '91.] § 1. That hereafter the expenses for the care, board and keeping of patients in the hospital for the insane shall be a charge upon each county sending such patient or patients to the hospital as hereinafter provided.

2997. Duty of superintendent. [Ch. 79, '91.] § 2. When the superintendent of the hospital for the insane has been duly notified that a patient sent to the hospital from one county has a legal settlement in another county he shall thereafter hold and treat such patient as from the latter county, and such holding shall apply to expenses already incurred in behalf of such patient and remaining unadjusted.

[Ch. 104, '93.] And it shall further be the duty of the superintendent to furnish the county auditor of each county having patients in the hospital, a quarterly statement giving the number of patients, names and cost of maintenance of same, and it shall further be the duty of said county auditor to cause said report to be published in the official papers, with the proceedings of the county board. Said report as published shall also show the amount of tax collected from the county for the maintenance of the hospital.

2998. Certain expenses refunded. [Ch. 79, '91.] § 3. Expenses incurred by one county on account of an insane person whose legal settlement is in another county, shall be refunded with lawful interest thereon, by the county of such settlement, and shall be presented to the board of commissioners of the county sought to be charged, allowed and paid the same as other claims.

2999. Board of charities and corrections to fix rate. [Ch. 79, '91.]

§ 4. The board of charities and corrections shall from time to time fix the sum to be paid per month for the board and care of the patients, which shall not exceed the sum of sixteen (\$16) dollars per month, and the monthly sum so fixed shall be the sum the said hospital shall be entitled to demand for keeping any patient, and the certified [certificate] of the superintendent subscribed and sworn to by him shall be evidence in all places of the amount due as fixed.

3000. County commissioners to levy tax. See § 2299a.**3001. State auditor to charge delinquent county.** [Ch. 79, '91.]

§ 6. That upon the failure of any county to levy such tax as aforesaid to an amount sufficient to pay the amount then due the state, it shall be the duty of the state auditor to charge such delinquent county with a penalty of three per centum per month upon the amount of indebtedness, then six months due, for each month until payment thereof and penalty thereon be paid.

3002. Duty of county treasurer. [Ch. 103, '93; ch. 79, '91.] § 7.

It shall be the duty of the county treasurer upon the collection of the taxes herein required to be levied, to pay into the state treasury the amount due and owing from his county, at the times and in the manner required for the payment of state taxes collected, and the state auditor and the state treasurer shall upon the first day of July and of January in each year, transfer the full amount received from counties, under the provisions of this act to the account of the general fund of the state.

3003. Taxes not to be diverted to other purposes. [Ch. 103, '93; ch.

79, '91.] § 8. Taxes levied and collected in any county for the purpose named in this act shall be used only to defray the expenses of the insane which are chargeable to such county, and shall not be diverted to any other purpose nor be transferred to any other fund by the county authorities.

3004. Penalty. [Ch. 79, '91.] § 9. Any member of the board of

county commissioners or any county treasurer who shall violate any of the provisions of this act shall be liable to a fine of not less than one hundred or more than five hundred dollars, to be recovered in an action brought against him in the county court of his county in and for the judicial circuit in which said county is a part, in the name of the state, by the attorney general.

3005. Duty of state auditor. [Ch. 79, '91.] § 10. The state auditor shall notify the several county auditors and county treasurers of the provisions of this act, and it shall be the duty of said officers to present said notice to the board of county commissioners at their first meeting thereafter.

3005a. Expense of maintenance charged against estate of insane persons. [Ch. 98, '95.] § 1. The amount incurred by any county of this state for treatment and maintenance of any insane person in the hospital for the insane shall be a charge against the estate of such insane person. *Provided*, That the insane person has no heirs within the United States dependent on said estate for support, and that no real property shall be sold during the life of the insane person; and further provided, that no personal property shall be sold under five years from the date of the sending of such insane person to the asylum, unless by order of the court on the death of the insane person or when such property is liable to deteriorate in value during the time above specified, and when sold as above the county judge shall safely invest the proceeds thereof for the benefit of the insane person.

POSTAL RIGHTS OF INSANE PERSONS.

3006. How secured. Henceforth each and every inmate of each and every insane asylum, both public and private, in the state of South Dakota, shall be allowed to choose one individual from the outside world to whom he may write when or whatever he desires, and over these letters to this individual there shall be no censorship exercised or allowed by any of the asylum officials or employes; but their post-office rights, so far as this one individual is concerned, shall be as free and unrestricted as are those of any other resident or citizen of the state of South Dakota, and shall be under the protection of the same postal laws; and each and every inmate shall have the right to make a new choice of this individual party every three months if he so desires to do; and it is hereby made the duty of the superintendent to furnish each and every inmate of every insane asylum in this state either public or private, with suitable material for writing, inclosing, sealing, stamping and mailing letters, sufficient at least for the writing of one letter a week, providing they request the same, unless they are otherwise furnished with such materials; and all such letters shall be dropped by the writers thereof, accompanied by an attendant when necessary, into a post-office box provided by the state at the insane asylum, and kept in some place of easy access to all patients. The attendant is required in all cases to see that this letter is directed to the patient's correspond-

ent, and if it is not so directed it must be held to the superintendent's disposal; and the contents of these boxes shall be collected once every week by an authorized person from the post-office department and by him placed in the hands of the United States mail for delivery. [C. L. 2199.]

3007. Duty of superintendent. It is hereby made the duty of the superintendent to keep registered and posted in some public place at the insane asylum a true copy of the names of every individual chosen as the inmate's correspondent, and by whom chosen; and it is hereby made the duty of the superintendent to inform each of the individuals of the name of the party choosing him, and he is to request him to write his own name on the outside of the envelope of every letter he writes to this individual inmate; and all these letters bearing the individual writer's name on the outside, he is requested to deliver, or cause to be delivered, any letter or writing to him directed, without opening or reading the same, or allowing it to be opened or read, unless there is reason for believing the letter contains some foreign substance which might be used for medication, in which case the letter shall be required to be opened in the presence of a competent witness, and this substance shall be delivered to the superintendent, to be used at his discretion. [C. L. 2200.]

3008. Penalty. Any person refusing or neglecting to comply with, or willingly or knowingly violating any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as the criminal code of the state of South Dakota prescribes, and by ineligibility to any office in the asylum afterwards. [C. L. 2201.]

3009. Act to be printed and posted. A printed copy of this act shall be framed and kept posted in every ward of every insane asylum, both public and private, in the state of South Dakota. [C. L. 2202.]

ARTICLE 3. SALE OF INTOXICATING LIQUORS.

3010. License to be paid annually. [Ch. 72, '97.] § 1. That in all townships, precincts, towns and cities of this state there shall be annually paid the following license upon the business of the manufacturing, selling or keeping for sale by all persons whose business in whole or in part consists in selling or keeping for sale or manufacturing in this state distilled, brewed or malt liquors, or mixed liquors, as follows: Upon the business of selling or offering for sale any spirituous, vinous, malt, brewed, fermented, or other intoxicating liquors, at retail, or any

mixture or compound except proprietary patent medicines which in part consists of intoxicating liquors, four hundred dollars (\$400) per annum; upon the business of selling only brewed or malt liquors at wholesale, six hundred dollars (\$600) per annum, said license to be paid in each township, precinct, town or city in which said wholesaler has or operates a warehouse or depository; upon the business of selling spirituous or intoxicating liquors at wholesale, one thousand dollars (\$1,000) per annum; upon the business of manufacturing brewed or malt liquors for sale, four hundred dollars (\$400) per annum; upon the business of manufacturing for sale spirituous or intoxicating liquors, one thousand dollars (\$1,000) per annum. No person, firm or corporation paying a manufacturer's license in this state on brewed or malt liquors under this act shall be liable to pay a wholesale dealer's license on the product of such manufactory. A person, firm or corporation shall pay the license herein provided in as many different places as he carries on business.

3011. Retail dealers defined. [Ch. 72, '97.] § 2. Retail dealers of spirituous or intoxicating liquors and brewed, malt or fermented liquors shall be held and deemed to include all persons who sell any such liquors by the drink in quantities of less than five gallons at one time to any person or persons. Wholesale dealers shall be held and deemed to mean and include all persons who sell or offer for sale or deliver such liquors or beverages in quantities of five (5) gallons or more at any one time to any person or persons. No license imposed under this act shall be required from any person for selling any wine or cider made from fruits grown or gathered in this state unless such wine or cider be sold by the drink as other beverages are, nor from any person making wine or cider for his own use.

3012. License for portion of year. [Ch. 72, '97.] § 3. Every person engaged or intending to engage in any business mentioned in section one (1) of this act, and requiring the payment of any license mentioned in section one (1), shall on or before the first day of July in each year make and file with the county auditor in the county where it is proposed to carry on such business a statement in writing and on oath showing the name and residence of such person, the city, ward, town, township or precinct in which it is proposed to carry on such sale or manufacture, and the nature of the business in which such person is engaged or is intending to engage in, and shall on or before the first day of July in each year pay to the county treasurer in advance the licenses required by said section one (1) for such business for a year commencing on the first day of July and ending on the thirtieth day of June next thereafter. Every person engaged in any business specified in section one (1) of this act after the first day of July in each year

shall, before commencing such business, make and file a like statement on oath as is provided in this section, and pay in advance to said county treasurer a pro rata portion of the yearly license on such business as provided in section one (1) for the remainder of the year ending on the thirtieth day of June next ensuing; and in computing the time of such fractional part of a year for which license is required, the same shall commence on the first day of that month in which said business was commenced.

3013. Receipt for license. [Ch. 72, '97.] § 4. On receiving the license provided for in this act, the county treasurer shall give a receipt of the money so paid to the person or persons of whom the same shall be received, in which receipt the name of the person or persons paying the license shall be stated and shall specify therein the amount of the license and the time for which it was paid, the city, ward, town, township or precinct in which the business is to be conducted and the kind of business for and on account of which the license is paid, and he shall also deliver to such person or persons a notice printed on full sized printer's card-board, and in as large letters as practicable, which notice shall contain a statement of what license has been paid by the holder of said notice and the penalty for selling in violation of the provisions of this act, and that complaint may be made to any justice of the peace or police justice. Before commencing or doing any business for the time for which said license is paid and the receipt is given, said notice and receipt shall be posted up and at all times displayed in a conspicuous place in the room where the sale of the liquors or beverages in this act and for which the license was paid is carried on, so that such receipt and notice shall be displayed in a conspicuous manner to persons visiting or frequenting such room or place. And it shall be the duty of the county auditor to prepare printed blank receipts and notices conforming to the provisions of this act and to furnish the same in proper quantities to the county treasurer of his county, and no county treasurer shall issue any such receipt or notice until the license specified herein shall be paid in full in money; provided, that no license shall be granted to any person under any of the provisions of this act who has ever served any term of imprisonment in any penitentiary, or who shall be, after the taking effect of this act, convicted of keeping a disorderly house by any court of this state.

3014. Penalty. [Ch. 72, '97.] § 5. If any person or persons shall engage or be engaged in any business requiring the payment of license under section one (1) of this act without having paid in full the license required by this act, and without having the receipt and notice for such license posted up as required by this act, or without having made,

executed and delivered the bond required by this act, or shall in any manner violate any of the provisions of this act, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof, if there is no specified penalty provided therefor by this act, shall be punished by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) and costs of prosecution, or by imprisonment in the county jail not less than ten days nor more than thirty days, or by both such fine and imprisonment in the discretion of the court; and in case such fine shall not have been paid at the time such imprisonment expired, the person serving out such sentence shall be further detained in jail until such fine and costs shall have been fully paid as provided by statute; and any person or persons engaged in any business requiring the payment of a license under section one of this act who, after paying the license so required, shall be convicted of a violation of any of the provisions of this act, shall thereby, in addition to all other penalties prescribed by this act, forfeit the license so paid by him or them and be precluded from continuing such business for the remainder of the year or time for which said license was paid and be debarred from again engaging in any business requiring the payment of a license under section one of this act or from becoming a surety or sureties upon any bond required under section six of this act from the time of such conviction. Each violation of any of the provisions of this act shall be construed to constitute a separate and complete offense, and for each violation on the same day or on different days the person or persons offending shall be liable for the penalties and forfeitures herein provided and be precluded and debarred from continuing or engaging in any business requiring the payment of a license under this act as aforesaid. And it shall be the duty of the sheriffs, marshals, constables and police officers to forthwith close all saloons and other places where the business of manufacturing, selling or keeping for sale any of the liquors mentioned in section one of this act is being conducted, upon which business the license required by section one has not been paid in full and in which the receipt mentioned in section four of this act shall not be posted up and displayed.

3015. Bond of dealer. [Ch. 72, '97.] § 6. Every person engaged in the sale of any spirituous, malt, brewed, fermented or vinous liquors shall, before commencing such business, and on or before the first day of July in each and every year thereafter, make, execute and deliver to the county treasurer of the county in which he is carrying on such business a bond, the sufficiency of which shall be determined by the board of county commissioners of the county in which such business is proposed to be carried on, to the state of South Dakota in the sum of two thousand dollars (\$2,000), with two or more sufficient sureties

who shall be residents and freeholders of the town, township, city or county in which such business is proposed to be carried on, neither of whom shall hold any elective or appointive office in any county, city, town or township of this state except notaries public, nor be surety upon any other bond required by the provisions of this act, and each of whom shall justify in real estate situated in the county in which such business is proposed to be carried on in a sum equal to the amount of the bond, over and above all indebtedness and all exemptions from sale on execution, which bond shall be substantially in the following form:

“ Know all men by these presents, that we, as principal, and and as sureties, are held and firmly bound unto the state of South Dakota in the sum of two thousand dollars (\$2,000) to the payment whereof well and truly to be made we bind ourselves, our heirs, executors and administrators firmly by these presents.

Sealed with our seals and dated this day of A. D. 189..

Whereas, the above-named principal proposes to carry on the business of (describing the business) at in the county of; and

Whereas, the said principal has covenanted and agreed, and doth hereby covenant and agree, as follows, to wit:

That he will not directly or indirectly by himself, his clerk, agent or servant at any time sell, furnish, give or deliver any spirituous, malt, brewed, fermented or vinous liquors, or any mixed liquors, or any mixture or compound, any part of which is spirituous, malt, brewed, fermented or vinous liquors, to a minor or to any adult person whatever who is at the time intoxicated, nor to any person in the habit of getting intoxicated, nor to any person when forbidden in writing to do so by the husband, wife, parent, child, guardian or employer of such person, or by the supervisor of the township, mayor of the city or president or a trustee of any town, or member of the board of county commissioners of the county in which such person shall reside or temporarily remain; that he shall also pay all damages, actual and exemplary, that may be adjudged to any person or persons for injuries inflicted upon him or them either in person or property, or means of support or otherwise, by reason of his selling, furnishing, giving or delivering any such liquors.

Now the conditions of this obligation is [are] such that if said principal shall well and truly keep and perform all and singular the foregoing covenants and agreements, and shall pay any judgment for actual or exemplary damages which may be recovered against him in any court of competent jurisdiction, and all fines and costs that may be imposed upon him for any violation of this act; then this obligation shall be void and of no effect, otherwise the same shall be in full force and effect.

Signed, sealed and delivered in the presence of

..... [L. S.]
 [L. S.]
 [L. S.]

There shall be annexed to each bond required by this act an affidavit of each surety thereto, which affidavit shall state that the affiant is not engaged, either as agent or servant, in the sale of any liquor mentioned in this act, that he is not a surety upon any other bond required by the provisions of this act, that he is a resident and freeholder of the county, township or city in which such bond is offered, and that he does not hold any elective or appointive office in any county, city or township in this state, and that he is worth in real estate, which shall be described,

situated within the county in which such business is proposed to be carried on, a sum equal to the amount of the bond over and above all indebtedness and legal exemptions, and if in the judgment of the board of county commissioners of the county in which said business is proposed to be carried on, said sureties, or either of them, are not worth the full sum mentioned in said bond over and above all their liabilities and exemptions, or if the principal of said bond is known by said board to be a person whose character and habits would render him or her a person unfit to conduct the business of selling liquor, they, the said board, shall refuse to indorse said bond with their approval. Such bond shall not be received by the county treasurer unless the approval thereof by the said board shall be duly certified thereon in writing by the clerk or recording officer of such board, and the principal shall not be allowed to sell spirituous, malt, brewed or vinous liquors in any other building or place than that specified in said bond without giving notice and executing another bond in the manner above described. A new bond shall be required by the county treasurer with whom such bond was originally filed, in case of the death, insolvency or removal of either of the sureties, and in any other contingency that he shall determine requires it. And it shall not be lawful for any person to sell any of the liquors mentioned in section one of this act after being notified by the county treasurer to procure a new bond until said bond shall have been executed and approved by the proper board and filed with the county treasurer, and any sale made in violation of this section shall be a misdemeanor and shall be punished as provided in section five of this act; and in all actions brought upon said bond for damages by reason of the violation of any of the provisions thereof, the plaintiff in such action shall, in the event of recovering a judgment of any amount, also recover his costs of suit. The notice herein provided for shall be served and returned by the sheriff of the county, who shall receive from the county for such services the same fees as are allowed by law for the service of original writs in the circuit court.

3016. Disposition of license money. [Ch. 72, '97.] § 7. All moneys received by any county treasurer under section one of this act shall be by him placed to the credit of the general fund of the county, and upon each license granted in any county of the state, the county treasurer of such county shall transmit the sum of one hundred and fifty dollars (\$150) to the state treasurer which shall by the state treasurer be placed to the credit of the general fund of the state, and all moneys received from wholesalers' and manufacturers' licenses under section one of this act shall be turned into the state treasury.

3017. Duty of officers in case of violation. [Ch. 72, '97.] § 8. It shall be the duty of every county treasurer, sheriff, police officer or other

person having notice or knowledge of any violation of the provisions of this act to immediately notify the state's attorney of the county thereof, and it shall be the duty of such state's attorney, when complaint on oath is made, forthwith to prosecute every person violating any of the provisions of this act and for each violation thereof, and every sheriff and state's attorney shall at every term of the circuit court in their respective counties make to said court a specific and full report of all acts done by them in enforcing this act, and of each and every written complaint made concerning the violation of any of the provisions of this act, and shall report fully as to whether this act has been or is being violated.

3018. Reports by county treasurer. [Ch. 72, '97.] § 9. It shall be the duty of each and every county treasurer at the end of each and every month, to take a full and complete report under oath, containing the name of each and every person or persons in his county paying a license during said month under the provisions of this act, stating therein the residence of such person or persons, the nature of the business in which such person or persons are engaged, the place of doing business, the amount of license paid and the date of payment of the same, and file such statement with the auditor of the county, and such county treasurer shall also, on the first Monday of December in each year, make a full and complete report of all the facts as shown by such reports and return the same to the county auditor and publish the same in the official newspapers of his county.

3019. Penalty for neglect. [Ch. 72, '97.] § 10. In case any county treasurer, state's attorney or other officer, whose duty it is to see that the provisions of this act are faithfully enforced, shall wilfully neglect or refuse to perform his duty under the provisions of this act, he shall be liable to a penalty of one hundred dollars (\$100) for each and every offense, and the board of county commissioners may in case of such neglect or refusal, after summary hearing and determination thereon and deciding the same to have occurred, appoint some other person or persons to perform the duties of such officer prescribed by this act, who shall, upon being so appointed, have like powers and duties and receive therefor such compensation as said board of county commissioners may prescribe, which compensation so paid shall be taken from the salary of such officer or officers failing or neglecting to perform such duties; provided, however, that the county treasurer and state's attorney may take an appeal to the circuit court from the decision of the board of county commissioners in the manner provided by law.

3020. Sale to drunkard forbidden. [Ch. 72, '97.] § 11. It shall not be lawful for any person to sell, furnish or give away any spirit-

uous, malt, brewed, fermented or vinous liquors to any minor, to any intoxicated person, nor to any person in the habit of getting intoxicated, nor to any person when forbidden in writing so to do by the husband, wife, parent, child, guardian or employer of such person, or the supervisor of the township, or the president or trustee of a town, mayor of a city, the board of county commissioners of the county where such person shall reside or temporarily remain. The fact of selling, giving or furnishing any liquor in any place where intoxicating liquors are sold or kept for sale to any minor, or to any intoxicated person, or to any person in the habit of getting intoxicated, or to any person when forbidden in writing so to do by the husband, wife, parent, child, guardian or employer of such person, or by the supervisor of the township or the president or the trustee of the town, mayor of the city or board of county commissioners of the county where such person shall reside or temporarily remain, shall be prima facie evidence of an intent on the part of the person so selling, giving or furnishing such liquor to violate the law; provided, it shall be unlawful for any board or other person authorized by law to issue licenses under any of the provisions of the act to grant any such license to any person under twenty-one (21) years of age, and it shall also be unlawful to any person to whom any license may be granted to employ any person under twenty-one (21) years of age as a bartender or any other capacity in connection with the place or room where intoxicating liquors are sold

3021. No screens to be used. [Ch. 72, '97.] § 12. It shall be the duty of all venders of malt, spirituous or vinous liquors under the provisions of this act to keep the windows or doors of their respective places of business unobstructed by screens, blinds, paint or other articles, and not to have the windows located in such manner as to prevent the free and unobstructed view from the main street into the entire room or place where any of the intoxicating liquors mentioned in section one of this act are sold. There shall be no partitions of any kind in the room where a liquor business is conducted, and no person, firm or corporation conducting the business of retailers as mentioned in section two of this act shall allow any game of cards or dice, or billiards or pool, or any other game of skill or chance whereby money or any other valuable thing is usually wagered to be played in the room or place wherein intoxicating liquors are sold, or in any other room or place adjacent thereto, or in the same building or in any manner whatsoever connected with said liquor selling business, or any tables, chairs or any kind of seats allowed in the room or apartments in which such business is conducted, and any person offending against the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction

thereof shall be fined in a sum not less than fifty dollars (\$50) or by imprisonment in the county jail not less than ten days or both at the discretion of the court. To establish a prima facie case, it shall only be necessary to prove the front windows and doors, or either, of the building in which the license was granted to be used have been obstructed contrary to the provisions of this section.

3022. Minors not allowed. [Ch. 72, '97.] § 13. It shall not be lawful for any person who keeps a place where liquors are sold, except drug stores, to allow a minor to visit or remain in such room or place unless accompanied by his or her father or mother.

3023. Closed on Sunday and at night. [Ch. 72, '97.] § 14. All saloons, restaurants, bars in hotels or elsewhere, and all other places except drug stores, where any of the liquors mentioned in this act are sold or kept for sale, either at wholesale or retail, shall be closed on the first day of the week commonly called Sunday, on all election days from six o'clock in the morning until six o'clock in the evening and on each week day night from and after the hour of eleven o'clock until five o'clock in the morning on the succeeding day. And it shall be the duty of the sheriffs, marshals, constables and police officers to close all saloons, houses or places that may be found open in violation of the provisions of this act, and to report forthwith all such violations to the state's attorney whose duty it shall be to immediately prosecute for the same.

3024. Penalty for violation. [Ch. 72, '97.] § 15. Any person who shall violate any of the provisions of the two preceding sections shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as now provided by law for the punishment of misdemeanors.

3025. Damages. [Ch. 72, '97.] § 16. The damages in all cases arising under this act together with the costs of suits, shall be recovered in an action before any court of competent jurisdiction, and in any case where parents shall be entitled to such damages, either the father or mother may sue alone therefor, but the commencement of suit and recovery by one of said parties shall be a bar to a suit brought by the other. And it shall be lawful for any married woman, or any other person at her request, to institute and maintain in her own name a suit on any such bond mentioned in this act for all damages sustained by her or by her children on account of such traffic, and the money when so collected shall be paid over for the use of herself and children. On the trial of any suit under the provisions of this act, the cause and foundation whereof shall be the acts done or injuries inflicted by a

person under the influence of liquor, it shall only be necessary to sustain the action to prove that the defendant or defendants sold or gave away the liquor to the person so intoxicated or under the influence of liquor, whose acts or injuries are complained of, on that day or about that time when said acts are committed or said injuries were received, and in an action for damages brought by a married woman or other person whose support legally devolves upon a person disqualified by intemperance from earning the same, it shall only be necessary to prove that the defendant has given or sold intoxicating drinks to such person during the period of such disqualification.

3026. Duty of police. [Ch. 72, '97.] § 17. It shall be the duty of township constables, of city and town marshals, and in cities having no marshal, of the chief of police or some subordinate appointment by such chief to visit at least once in each week all places within their respective jurisdiction where any of said liquors are sold or kept to learn if any of the provisions of this act have been or are being violated, and whenever any of the officers above mentioned shall learn of any violation of the provisions of this act, it shall be his duty to enter a complaint before some justice of the peace of the proper township, town or city or police justice as the case may be, and do whatever may be necessary to bring the offender to justice.

3027. No security for costs in complaint. [Ch. 72, '97.] § 18. Whenever complaints shall be made to any justice of the peace or police justice of any violation of any of the provisions of this act he shall require no security for costs to be given, but shall take the complaint and examination of the witnesses as in other cases, and if the offense appears to have been committed he shall issue his warrant for the arrest of the offender and shall notify the state's attorney whose duty it shall be to appear and prosecute the same.

3028. All persons liable as principals. [Ch. 72, '97.] § 19. All persons engaged in the selling or keeping for sale of any of the liquors mentioned in this act, whether as owner, or as clerk, agent, servant or employe, shall be equally liable as principals for any violation of the provisions of this act, and any person or principal shall be liable for the acts of his clerk, servant, agent or employe for any violation of the provisions of this act.

3029. Adulteration prohibited. [Ch. 72, '97.] § 20. If any person shall adulterate any spirituous or alcoholic liquors used or intended for drink by mixing the same in the manufacture or preparation thereof, or by process of rectifying or otherwise, with any deleterious drug, substance or liquid, or if any person shall sell or offer to sell any such

spirituous or intoxicating liquors from any barrel, cask or vessel containing the same, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars (\$500) nor less than ten dollars (\$10), and shall be imprisoned in the jail of the county not more than six months nor less than ten days.

3030. Town or city license. [Ch. 72, '97.] § 21. It shall be competent and lawful for any township, precinct, town or city within the county, where such bond is filed and license paid, to prohibit and they shall prohibit, the party paying such license, as well as all others, from engaging in the business of selling intoxicating liquors to be drank in, upon or about the premises where sold within the corporate limits until he shall pay to the town, township or city treasurer such sum as may be fixed by ordinance, to be not less than two hundred dollars nor more than six hundred dollars. No additional bond shall be required, nor shall the authorities of any town, township or city receive the license provided for in this section from one who has not filed the bond or paid the license provided for in section one hereof, nor shall the authorities of said town, township or city receive the license for a longer period than the first day of July next succeeding, and the forfeiture of the license paid to the county treasury under the provisions of this act shall work a forfeiture of the license paid to the treasurer of said town, township or city. The intent hereof is to allow both the county and any incorporated town, township or city authorities to levy and collect a license for the sale of intoxicating liquors as herein provided.

3031. License may be refused. [Ch. 72, '97.] § 22. The city council of any city, the trustees of any town, or township board of supervisors of any city, town or township may in their discretion refuse to receive of any person, firm or corporation the license provided for in section twenty-one of this act in the event the person, firm or corporation shall be of immoral character or they shall deem him or them unfit to carry on the business of selling intoxicating liquors. But in case such corporate authorities shall refuse to receive such license, or permit such person, firm or corporation to sell intoxicating liquors at retail within any town, township or city, and the person, firm or corporation shall have already paid the license hereinbefore provided for into the county treasury, such moneys shall be returned to the person, firm or corporation that has paid the same, upon the warrant of the board of county commissioners of said county.

3032. Question of granting permits to be submitted to vote. [Ch. 72, '97.] § 23. At the annual municipal election held in any township, town or city in this state, for general municipal purposes, the ques-

tion of granting permits to sell intoxicating liquors at retail within the corporate limits of such township, town or city shall be submitted to the legal voters thereof, upon petition signed by twenty-five (25) legal voters of such township, town or city, to be filed with the clerk or auditor of such township, town or city, thirty days before such election, which petition shall state that a vote is desired upon such question. The question shall be submitted on a separate ballot conforming with the general election laws of the state, upon which ballot there shall be printed the words "shall intoxicating liquors be sold at retail?" before which words there shall be printed the words "yes" and "no," and any voter in favor of the sale of such liquors as aforesaid shall mark the word "yes" with a cross (X) and any voter opposed to such sale shall mark the word "no" with a cross (X), and if a majority of the voters of such township, town or city vote in favor of such sale of intoxicating liquors at retail, the corporate authorities thereof shall grant permits for such sale for the ensuing year in accordance with the provisions of this act, but if a majority of such voters shall vote against such sale, no such permits shall be granted; "provided, that for the purpose of determining whether intoxicating liquors shall be sold at retail in any town, township or city in this state between the time when this act shall take effect and the next municipal election thereafter, when applications shall be made in the manner provided in this act for the sale of intoxicating liquors at retail a special election shall be called by the city clerk or auditor of the city, or the town or township clerk of the town or township, to be held not less than twenty (20) nor more than thirty (30) days after application shall be made for a permit to sell such liquors as aforesaid, which election shall be held in conformity to the provisions of this section, and if at such election a majority of the voters shall vote for such sale of intoxicating liquors at retail permits shall be granted by the corporate authorities in accordance with the provisions of this act, but if a majority of such voters shall vote against such sale no permits shall be granted;" provided that nothing in this section shall apply to any precinct in which there is not any incorporated town or city, and where license is granted therein the same shall be issued by the county wherein said product is located.

3033. Petition for license. [Ch. 72, '97.] § 24. Before the city council of any city, or the board of trustees of any township shall receive any license or grant a permit for the sale of intoxicating liquors at retail within such city, town or township an application shall be made in writing to said corporate authorities, giving the name, residence and location of the place where any person, firm or corporation intends to engage in the business of selling intoxicating liquors at retail, and accompanying the application there shall be a petition, signed by

twenty legal voters of the ward, precinct, town or township in which such person, firm or corporation intends to engage in business as retail dealer, above the age of twenty-one years, stating that the person, firm or corporation about to engage in such business of selling intoxicating liquor at retail is a person of good moral character, and one who can safely be trusted to engage in the business or calling of selling intoxicating liquors at retail, which application and petition shall be filed with the city, town or township authorities at least twenty days before such license shall be received or any permit granted, and notice of such application shall be published in one of the official newspapers of the county wherein such business is to be conducted for two successive weeks, stating the time and place where such application will be heard by said corporate authorities, at which time any person or persons may appear before said corporate authorities and give any reason why such license should not be received or permit granted to sell intoxicating liquors at retail.

3034. Receipt for license money. [Ch. 72, '97.] § 25. Upon the determination of the city council of any city, the board of trustees of any town, or the board of supervisors of any township, to receive the license provided for in section twenty-one of this act, a receipt shall be given therefor by the treasurer of such city, town or township to the person, firm or corporation paying such license, and the permit granted by the corporate authorities to sell intoxicating liquors for the period for which such license shall be paid.

3035. Prohibited near church or public school. [Ch. 72, '97.] § 26. No person, firm or corporation shall engage in the business or calling of selling of intoxicating liquors in the same block with or in any block adjacent to any public or private school or within two hundred feet of any church.

3036. Registered pharmacist may sell for certain purposes. [Ch. 72, '97.] § 27. It shall be lawful for any registered pharmacist owning and conducting a pharmacy, whose certificate of registration is in force to sell spirituous, vinous or malt liquors for medicinal, scientific, mechanical or sacramental purposes, and it shall be unlawful for any registered pharmacist to knowingly sell any intoxicating liquors whatever to be used as a beverage, and any registered pharmacist who shall sell any intoxicating liquors for any of the purposes mentioned in this section shall have a stock of drugs of the value of not less than six hundred dollars (\$600) exclusive of the fixtures and intoxicating liquors. Any registered pharmacist who shall knowingly sell, or in any manner dispose of said intoxicating liquors for any other purposes than authorized in this section shall be, upon conviction thereof, fined not less

than one hundred dollars (\$100) nor more than three hundred dollars (\$300) for the first offense, and for a second conviction shall forfeit his registration as a registered pharmacist, and shall be liable to all the penalties, prosecutions and proceedings at law and in equity, provided against persons selling without authority, and upon said conviction the clerk of the circuit court shall, within ten days after such judgment or order, transmit to the secretary of the board of pharmacy the certified record thereof, upon receipt of which the said board of pharmacy shall, at their first regular meeting thereafter, strike the name of said druggist from the list of registered pharmacists and revoke his certificate of registration.

ARTICLE 4. OPIUM SMOKING.

3037. Selling without permit unlawful. It shall be unlawful for any person, by himself, by agent or otherwise, to either directly or indirectly sell or give away opium or any other commodity of which opium is an ingredient, unless the person so selling or giving away the said article has a written permit or license from the authorities of the city or town in which such person carries on business, or from the board of county commissioners of the county wherein said person resides, in case he does not carry on business in any city or town, and unless the person to whom opium or other articles are sold or given away shall obtain and present to the person selling the same a prescription for the said articles in writing, signed by a reputable practicing physician. [C. L. 2240.]

3038. Smoking opium unlawful. It shall be unlawful for any person to smoke opium or any commodity whatever of which opium is an ingredient. [C. L. 2241.]

3039. Unlawful use of premises prohibited. It shall be unlawful for any person owning or having in charge or possession any room, building, cellar or other place or premises, to permit opium or any commodity of which opium is an ingredient to be smoked in, upon or about such place or premises. [C. L. 2242.]

3040. Penalty. Any person violating the provisions of sections twenty-two hundred and forty, twenty-two hundred and forty-one or twenty-two hundred and forty-two shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment. [C. L. 2243.]

3041. Places for smoking declared a nuisance. Any room, building, cellar or other place or premises used or permitted to be used for smoking of opium or any commodity of which opium is an ingredient, shall

be considered and is hereby declared a public nuisance, and the circuit court or the judge thereof may at any time, upon satisfactory proof that the smoking or use of opium is permitted or carried on in any such premises, order and cause any such premises to be abated as a public nuisance. [C. L. 2244.]

3042. Jurisdiction of justice of the peace. Justices of the peace shall have concurrent jurisdiction with the circuit court to hear, try and determine any case arising under this act within their county. It is hereby made the especial duty of all ministerial officers to enter complaint in each case of the violation of this act, and they are hereby required to ascertain by inquiry and examination as to any such violations. [C. L. 2245.]

ARTICLE 5. PUBLIC HEALTH.

ADULTERATION OF FOOD AND DRINK.

3043. Adulteration must be published. [Ch. 65, '97.] No person shall knowingly sell any kind of diseased, corrupted or unwholesome provisions whether for meat or drink, without making the same fully known to the buyer, or shall fraudulently adulterate for the purpose of sale any substance intended for food, or any wine, spirits or other liquor intended for drinking, or color, stain or powder any article of food, drink or medicine, or any article which enters into the composition of food, drink or medicine, with any other ingredients or materials whether injurious to health or not, for the purpose of gain or profit, or sell or offer the same for sale, or order or permit any other person to sell or offer for sale any article so mixed, colored, stained or powdered, unless the same be so manufactured, used or sold, or offered for sale under its true and appropriate name, and notice that the same is mixed or impure is marked, printed or stamped upon each package, roll-parcel or vessel containing the same, so as to be and remain at all times readily visible or unless the person purchasing the same is fully informed by the seller of the true name and ingredients (if other than such as are known by the common name thereof) of such article of food, drink or medicine at the time of making sale thereof or offering to sell the same; provided, that nothing in this act shall be construed as to prevent the use of harmless coloring of butter or cheese made from whole milk or cream, or as considering such coloring to be an adulteration, or requiring butter or cheese so made to be branded as "impure." [C. L. 2246.]

3044. Young calves. When complaint is made on oath to any court or justice of the peace authorized to issue warrants in criminal cases, that meat of calves killed when less than four weeks old is kept or con-

sealed with intent to sell the same for purposes of food, such magistrate, when satisfied that there is reasonable cause for such belief, may issue a warrant in search therefor. [C. L. 2247.]

3045. Oleomargarine. [Ch. 65, '97.] No person by himself or his agents or servants shall render, or manufacture, sell or offer for sale, take orders for future delivery, or have in his possession, keep in storage, distribute, deliver, transfer or convey with intent to sell, within the state of South Dakota, any article, produce or compound made wholly or partly out of any fat, oil or oleomargarine substance or compound thereof, not produced from unadulterated milk or cream from the same, which shall be in imitation of butter produced from pure unadulterated milk or cream of the same; provided, that nothing in this act shall be construed to prohibit the manufacture or sale of oleomargarine in a separate and distinct form, and in such a manner as will advise the consumer of its real character, free from coloration or ingredients that cause it to look like yellow butter; and, provided, further, that such substance or compound thereof, also or oleomargarine shall be colored pink. [C. L. 2248.]

3046. Punishment. [Ch. 65, '97.] § 3. Any person convicted of violating any of the provisions of sections one and two of this act shall be deemed guilty of a misdemeanor and punished with imprisonment in the county jail not to exceed six months nor less than three months, or by fine not to exceed two hundred dollars (\$200) nor less than one hundred dollars (\$100).

3047. Penalty for erasing marks. [Ch. 65, '97.] Whoever furnishes or causes to be furnished in any hotel, restaurant, boarding house, or at any lunch county [counter], oleomargarine or butterine to any guest or patron of such hotel, restaurant, boarding house, or lunch counter in place or stead of butter, shall notify said guest or patron that the substance so furnished is not butter and any party so furnishing without such notice shall be punished by a fine of not less than ten dollars (\$10) or more than fifty dollars (\$50) for each offense. [C. L. 2249.]

3048. Duty of health officer. Every health officer, sheriff, deputy sheriff or constable shall institute complaint for the violation of the two preceding sections whenever he has reasonable cause for suspicion and on the information of any person who shall lay before him satisfactory evidence of the same. Said officers shall take specimens of suspected butter or cheese, and cause the same to be analyzed or otherwise satisfactorily tested. The expense of such analysis or test, not exceeding twenty dollars in any one case, may be included in the costs

of prosecution, and taxed and allowed to the officer paying the same. [C. L. 2250.]

3049. Butter and cheese defined. For the purposes of the three preceding sections, the terms "butter" and "cheese" mean the products usually known by those names, and which are manufactured exclusively from milk or cream, or both, with salt and rennet, and with or without coloring matter. [C. L. 2251.]

PURE FOOD LAW.

3050. Adulterated food labeled. [Ch. 89, '99.] § 1. No person shall within this state by himself, his servant, or agent, or as the servant or agent of any other person or corporation, manufacture for sale, or offer for sale, or sell, or ship into this state, any food jellies which are adulterated with any foreign substance or substances within the meaning of this act, unless the can, jar, glass, firkin, tub, or other package containing the same shall bear a label or brand in the manner and form hereinafter required and directed.

3051. Food jellies defined. [Ch. 89, '99.] § 2. The term food jellies, as used herein, shall embrace and include all the substances known and recognized in commerce as jellies for human consumption as food, whether such jellies are preparation of animal or vegetable products.

3052. Label described. [Ch. 89, '99.] § 3. Every firm, person, or corporation manufacturing for sale, offering or exposing for sale, or selling, delivering to a purchaser any food jelly or any mixture or compound intended for use as a food jelly which is adulterated as hereinbefore defined, shall securely affix or cause to be affixed in a conspicuous place upon the side of every can, jar, glass, tub, firkin, or other package wherein the same is contained, offered or exposed for sale or sold, a label, upon the outside and face of which is distinctly printed upon a background of a single color, in the English language, and in legible type, no smaller than double pica, the name and location of the factory, of the person, firm, or corporation, manufacturing the same, the words, "Mixture" and "Adulterated" and immediately following and below these words the common English name and the quality, grade and net weight of the article claimed to be contained in such can, jar, glass, tub, firkin, or other package.

3053. Lard included. [Ch. 89, '99.] § 4. No person shall within this state manufacture for sale, have in his possession with intent to sell, offer or expose for sale, or sell, as lard, any substance not the legitimate and exclusive product of the fat of the hog.

3054. Possession. [Ch. 89, '99.] § 5. Every person who manufactures for sale within this state, has in his possession with intent to sell, offers, or exposes for sale, or sells as lard, or as a substitute for lard, or an imitation of lard, any mixture or compound which is designed to take the place of lard, and which is made from animal or vegetable oils or fats, or any mixture or compound consisting of part of lard in mixture or combination with animal or vegetable oils or fats, unless the same shall be branded or labeled as hereinafter required and directed, shall be guilty of a misdemeanor, and shall upon conviction be subject to the penalties hereinafter provided in this act.

3055. Lard substitute label. [Ch. 89, '99.] § 6. Every person who manufactures for sale, has in his possession with intent to sell, offers, or exposes for sale, or sells, any substance made in the semblance of lard, or as an imitation of lard, or a substitute for lard, and which is designed to take the place of lard, and which consists of any mixture or compound of animal or vegetable oils or fats other than hog fat in the form of lard, shall cause the tierce, barrel, tub, pail, or package containing the same to be distinctly and legibly branded or labeled in letters not less than one inch in length, the name of the person or firm making the same, together with the location of the manufactory, and the words "lard substitute" and immediately following the same in letters not less than one-half ($\frac{1}{2}$) inch in length, with the names and approximate proportions of the several constituents which are contained in the mixture or compound.

3056. Adulterated lard label. [Ch. 89, '99.] § 7. Every person who manufactures for sale, has in his possession with intent to sell, offers, or exposes for sale, or sells, any substance made in the semblance of lard, or as an imitation of lard, or as a substitute for lard, and which is designed to take the place of lard, and which consists of any mixture or compound of lard with animal or vegetable oils or fats, shall cause the tierce, barrel, tub, pail, or package containing the same to be distinctly and legibly branded or labeled in letters not less than one (1) inch in length, with the name of the person or firm making the same, together with the location of the manufactory, and

the words "adulterated lard," and immediately following the same letters not less than one-half ($\frac{1}{2}$) inch in length, with the names and approximate proportions of the several constituents which are contained in the mixture or compound.

3057. Duty of dealer. [Ch. 89, '99.] § 8. Every dealer or trader who, by himself or his agent, or as the servant or agent of another person, offers or exposes for sale, or sells, any form of lard substitute or adulterated lard as hereinbefore defined, shall securely affix or cause to be affixed to the package wherein the same is contained, offered for sale or sold, a label upon the outside and face of which is distinctly and legibly printed in letters not less than one-half ($\frac{1}{2}$) inch in length, the words "lard substitute" or "adulterated lard," and immediately following the same, in letters not smaller than long primer, the names and approximate proportions of the several constituents which are contained in the mixture or compound, and shall furnish to the purchaser at the time of sale, a card upon which is distinctly and legibly printed the name of the article as hereinbefore defined, and a list of the several components of the mixture.

3058. Duty of manufacturer and caterer. [Ch. 89, '99.] § 9. Every person who manufactures for sale, or who offers or exposes for sale, or sells, or who serves to guests as keeper of hotel, restaurant, dining room, or in any other capacity, articles of food which have been prepared, either wholly or in part, with lard substitutes or adulterated lard as hereinbefore defined, shall at the time of sale furnish to the purchaser a card upon which is distinctly and legibly printed the words "This food is prepared with lard substitute (or adulterated lard)," or in case no bill of fare is provided, there shall be kept constantly posted upon each of the sides of the dining room, in a conspicuous position, cards upon the face of which is distinctly and legibly printed in the English language, and in letters of sufficient size to be visible from all parts of the room the words, "Lard Substitute (or Adulterated Lard) is used in the preparation of the food served here." Provided, however, that the provisions of this act shall not apply to cottolene, a compound consisting of a mixture of beef stearine and refined cotton seed oil, where the tierce, barrel, tub, pail, or package containing the same shall be distinctly and legibly branded or labeled in letters not less than one-half ($\frac{1}{2}$) inch in length, with the word "Cottolene" and the name and location of the person or firm

manufacturing the same, and, provided further, that said cottolene shall not be manufactured in imitation of lard and shall not contain any substance deleterious to health.

3059. Alum compounds to be labeled. [Ch. 89, '99.] § 10. Every person who manufactures for sale within this state, or offers or exposes for sale, any baking powder, or any mixture or compound intended for use as a baking powder under any name or title whatsoever, which shall contain, as may appear by the proper tests, any alum, in any form or shape, unless the same be labeled, as hereinafter required and directed, shall be deemed guilty of a misdemeanor.

3059a. Label described. [Ch. 89, '99.] § 11. Every person making or manufacturing baking powder, or any mixture or compound intended for use as a baking powder, which contains alum in any form or shape, shall securely affix, or cause to be securely affixed, to every box, can or package, containing such baking powder or like mixture or compound, a label, upon the outside and face of which is distinctly printed in legible type, no smaller than "brevier heavy Gothic caps", the name and residence of the manufacturer, and the following words: "This Baking Powder Contains Alum." Any person or persons violating the provisions of this section shall be deemed guilty of a misdemeanor.

3059b. Cider vinegar. [Ch. 89, '99.] § 12. Every person who manufactures for sale, or offers or exposes for sale as cider vinegar, or vinegar not the legitimate product of pure apple juice known as apple cider, or vinegar not made exclusively of said apple cider, or vinegar into which foreign substances, drugs or acids have been introduced, as may appear by proper tests, shall be deemed guilty of a misdemeanor.

3059c. Penalty for adulterations. [Ch. 89, '99.] § 13. Every person who manufactures for sale or offers for sale, any vinegar, found upon proper tests to contain any preparation of lead, copper, sulphuric acid, or other ingredients injurious to health, shall be deemed guilty of a misdemeanor.

3059d. Sale prohibited. [Ch. 89, '99.] § 14. No person, by himself, his servant, or agent, or as the servant or agent of any other person, shall sell, exchange, deliver, or have in his custody or possession, with intent to sell or exchange, or expose, or offer for sale or ex-

change, any adulterated vinegar, or label, brand, or sell as cider vinegar, or as apple vinegar, any vinegar not the legitimate product of pure apple juice, or not made exclusively from pure apple cider.

3059e. Adulteration defined. [Ch. 89, '99.] § 15. All vinegar shall have an acidity equivalent to the presence of not less than four and one-half ($4\frac{1}{2}$) per cent by weight of absolute acetic acid, and in case of cider vinegar shall contain in addition not less than two (2) per cent by weight of cider vinegar solids upon full evaporation over boiling water, and if any vinegar contains any artificial coloring matter, or less than the above acidity, or, in the case of cider vinegar, if it contains less than the above amount of acidity or of cider vinegar solids, it shall be deemed to be adulterated within the meaning of this act. All manufacturers of vinegar in the state of South Dakota, and all persons who reduce or re-barrel vinegar in this state, and all persons who handle vinegar in lots of one barrel or more, and all person or persons that ship vinegar into this state are hereby required to stencil or mark in black figures at least one inch in length, on the head of each barrel of vinegar bought or sold by them, the kind of vinegar contained in each package or barrel, together with the name of the manufacturer and location of the factory where the same is made, and the standard strength of the vinegar contained in the package or barrel, which latter shall be denoted by the number of grains of pure bicarbonate of potash required to neutralize one fluid ounce of vinegar. Any neglect so to mark or stencil each package or barrel, or any false marking of packages or barrels, shall be deemed a misdemeanor.

3059f. Penalty for adulterating lard. [Ch. 89, '99.] § 16. Whoever adulterates, for the purpose of sale, lard with cotton seed oil, or other vegetable oils, or terra alba, or any other substance injurious to health, shall be deemed guilty of a misdemeanor.

3059g. Impure honey — label. [Ch. 89, '99.] § 17. It shall be unlawful for any person or persons within the state of South Dakota to offer for sale or have in their possession with intent to sell, sell, or cause to be sold honey compounded, manufactured from, or mixed with glucose, sugar syrup of any kind, or any substance whatever not the legitimate product of the honey bee, unless the package containing the same is so marked and represented as such and bearing the label upon the package printed thereon in heavy Gothic capitals, eighteen

point, the name of the person, or persons, having compounded, manufactured or mixed the same, and the name of the substance or material from which it is compounded, manufactured or mixed with.

3059h. Artificial honey label. [Ch. 89, '99.] § 18. It shall be unlawful for any person or persons within the state of South Dakota, to offer or have in their possession, for sale, sell, or cause to be sold, honey which has not been made by the bees from the natural secretion of flowers and plants but which has been stored or made by the bees from glucose, sugar, syrup, or and other material or substance fed to them; unless the same is marked, represented and designated as such, and bearing a label upon each package printed in heavy Gothic capitals, eighteen point, thereon, the name of the person or persons who fed, or caused to be fed, the substance or material from which the same is stored or made, and the name of the substance or material from which the said honey is stored or made.

3059i. Definition. [Ch. 89, '99.] § 19. The term "spices and condiments," as used herein, shall embrace and include all substances known and recognized in commerce as spices and used as condiments, whether the same be in their natural state or in the form which would result from the grinding, milling, or mixing, or the compounding of the natural product.

3059j. Spices labeled. [Ch. 89, '99.] § 20. No person shall, by himself, his servant, or agent, or as the servant or agent of any other person or corporation, manufacture for sale or offer for sale, or sell to the residents of this state any spices and condiments, either ground or unground, which are adulterated with any foreign substance, or substances, within the meaning of this act, unless the package or box containing the same shall bear a label or brand in the manner and form as hereinafter required and directed.

3059k. Label described. [Ch. 89, '99.] § 21. Every person or firm or corporation manufacturing for sale, offering or exposing for sale, or sells, or delivers to a purchaser, any spices, condiment, or any mixture or compound intended for use as a spice or condiment, which is adulterated as hereinbefore defined, shall securely affix or cause to be affixed in a conspicuous place upon the side of every box or package wherein the same is contained, offered or exposed for sale, or sold, a label upon the outside and face, on which is distinctly printed upon a background of a single color, in the English language

and in legible type not smaller than double pica, the name and location of the factory of the person, firm or corporation manufacturing the same, the words "mixture" and "adulterated," and immediately following and below these words, the common English name of the spice or condiment which the box or package contains; also the net weight of the package must be printed in plain type on the label.

3059l. Adulterated candy. [Ch. 89, '99.] § 22. No person shall, by himself, his servant, or agent, or as the servant or agent of any other person or corporation, manufacture for sale or knowingly sell or offer for sale, any candy adulterated by the mixture of terra alba, barytis, talc, or any other mineral substance, by poisonous colors or flavors, or other ingredients deleterious to health.

3059m. Label for adulterated food. [Ch. 89, '99.] § 23. It shall be unlawful for any person or persons to offer for sale to the residents of this state, or have in their possession with intent to sell, sell, or cause to be sold, any article of food whatsoever that is adulterated, unless the package containing the same bears a label upon the outside and face of said package on which is distinctly printed, in the English language, and in legible type not smaller than double pica, the name and location of the person, firm or corporation manufacturing the same, the word "adulterated," and immediately following and below this word the common English name of the article of food which the box or package contains.

3059n. Evidence. [Ch. 89, '99.] § 24. The having in possession by any firm, person or corporation any article or substance hereinbefore described and referred to as adulterated or mixed, and which is not labeled as hereinbefore required and directed, shall be considered as prima facie evidence that the same is kept by such person, firm or corporation in direct violation of the provisions of this act.

3059o. Chemists's certificate. [Ch. 89, '99.] § 25. In all prosecutions arising under this act, the certificate of the chemist making the analysis, when duly sworn to by such analyst, shall be prima facie evidence of the fact or facts as therein certified.

3059p. Adulteration of food defined. [Ch. 89, '99.] § 26. Any article of food shall, for the purposes of this act be deemed adulterated:

1. If any substance or substances shall have been mixed with an article of food so as to lower or depreciate its quality, strength or purity.

2. If any cheaper or inferior substance or substances have been substituted wholly or in part for it.

3. If any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it.

4. If it is an imitation of, or sold or represented for sale under the name of any other substance or article.

5. If it is colored, powdered or treated in any manner whereby damage or inferiority is concealed.

6. If it contains any added substance or ingredient which is poisonous or injurious to health.

3059q. Prosecutions. [Ch. 89, '99.] § 27. In all prosecutions under the various sections of this act, the cost thereof shall be paid in the manner now provided by law, and it shall be the duty of all prosecuting attorneys to represent and prosecute in behalf of the people, within their respective counties, all such cases of offense arising under the provisions of this act, and all fines imposed shall be paid into the state treasury. Provided, nothing in this act shall be construed to affect stocks purchased, on hand, and for sale prior to the taking effect of this act.

3059r. Penalty. [Ch. 89, '99.] § 28. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five (25) dollars, nor more than fifty (50) dollars and costs, or by imprisonment in the county jail not less than thirty days, nor more than ninety days.

PRESERVATION OF WATERS IN GENERAL.

3060. Unlawful to deposit manure and carcasses on the banks of any lake, river or stream. [Ch. 119, '90.] § 1. It shall be unlawful for any person, persons, company or corporation to place or cause to be placed any manure, butcher's offal, carcasses of animals or other deleterious substances into any river, stream or lake, in the state of South Dakota, or upon the banks thereof in such proximity that such substances may be washed into said water or water courses.

3061. Penalty for violation. [Ch. 119, '90.] § 2. Any violation of the provisions of this act is a misdemeanor and the person, persons, company or corporation so violating are deemed guilty thereof, and upon conviction shall be liable to a fine of not less than ten dollars nor more than one hundred dollars, and in addition thereto such of-

fending person or persons shall be subjected to imprisonment in the county jail for the period of thirty days, unless he or they cause such deleterious substance to be removed.

3062. When this act shall not apply. [Ch. 119, '90.] § 3. This act shall not be so construed as to interfere with or prevent any necessary or legitimate mining operation or sewerage system.

3062a. Justices of the peace shall have jurisdiction. [Ch. 119, '90.] § 4. Justices of the peace of the proper county shall have jurisdiction to try and determine all offenses arising under the provisions of this act subject to appeal as in other criminal causes.

ARTICLE 6. DOMESTIC ANIMALS — MARKS AND BRANDS.

3063. Owner of stock may adopt. [Ch. 90, '97.] § 1. Any person or persons having cattle, hogs, sheep, horses, mules or asses shall have the right to adopt a brand or mark, for the use of which he shall have the exclusive right in this state, after recording such brand or mark as hereinafter provided.

3064. State brand committee, governor appoint. [Ch. 90, '97.] § 2. That for the purpose of creating a state brand and mark committee, and state registry of brands and marks, it shall be the duty of the governor, immediately upon the passage of this act, and every two years thereafter, to appoint three reputable stock raisers, being residents of this state, who shall be men of judgment and experience in marks and brands, who shall be chosen from those largely interested in cattle, two of which persons so chosen shall reside west of the Missouri river, who shall hold their office for a term of two years and until their successors are appointed. Said three persons so chosen, together with the secretary of state, shall constitute a state brand and mark committee. Said committee shall meet at least twice each year at the office of the secretary of state, and as often at the call of the chairman as is necessary to transact the business of the board. A chairman shall be elected for a term of two years at the first meeting of said board. Vacancies that occur shall be filled by the governor.

3065. Duty of secretary of state. [Ch. 90, '97.] § 3. The secretary of state shall as soon as practicable after the passage of this act procure a suitable book or books in which all brands and marks shall be recorded. Each person desiring to have his brand and mark recorded, as hereinafter provided, shall pay into the office of the secretary of state a fee of one dollar and fifty cents (\$1.50) for recording such brand or mark, twenty per centum of all of which fees so paid into said office shall be paid to each member of said state brand and mark committee as full compensation for their services, and twenty per centum of said fee shall constitute a fund out of which to defray the expenses of the

secretary of state incidental to the discharge of his duties as a member of said committee.

3066. Restrictions on recording. [Ch. 90, '97.] § 4. No person shall have or adopt a brand or mark previously recorded under this act to another person, neither shall the secretary of state record the same brand or mark to more than one person.

3067. Certificate. [Ch. 90, '97.] § 5. Any person desiring to use any brand or mark shall make and sign a certificate, setting forth a fac simile and description of the brand and mark which he desires to use, or to which shall be attached a certified copy of the record of such brand and mark from any county in which the same shall have been recorded, if so recorded, and showing the date of such record, and shall file the same of record in the office of the secretary of state on or before the thirty-first day of December, eighteen hundred and ninety-seven; provided, that no brand shall be filed or registered unless the same is in actual use.

3068. Accepted by committee. [Ch. 90, '97.] § 6. The authority of deciding whether a brand or mark offered for record does or does not conflict with any previously recorded brand or mark, shall be vested in the committee named in section two of this act, any three of which members shall constitute a quorum. All brands offered for record shall be submitted before acceptance to this committee, provided, that no brand described as being of either side of the animal shall be accepted or recorded; provided further, that a brand described as being on both sides may be accepted. The objection of any three members of said committee or a majority of the quorum, shall effect the rejection of a brand. It shall be the duty of the secretary of state to file all brands offered for record pending the examination, which he shall cause to be made as promptly as possible; and if the brand is accepted the ownership shall date from the date of filing.

3069. Meetings. [Ch. 90, '97.] § 7. The secretary of state shall call together the other members of said committee at his office on the first Monday of January, eighteen hundred and ninety-eight; they shall examine any evidence of brands or marks, or records thereof which may heretofore have been made in the office of any register of deeds of this state, and any other evidence of such marks or brands which may be presented by the owner, and in any case where in the judgment of three of them, or a majority of a quorum of said committee, a brand or mark is found which conflicts with one previously recorded, or which might in its use endanger the property of the party owning the brand or mark earliest of record, it shall be the duty of the secretary of state to notify the party owning said brand last of record that the further use

of the same will be illegal to the same extent as though it had never been recorded, unless previously agreed upon by owners of such brands or marks and a joint statement be presented to the secretary of state by such brand owners. The said notice shall be given by letter. It is expressly provided that this enactment shall not in any way affect or invalidate the ownership of animals which were branded with said brand then registered previous to such examination and rejection, the object of this act being to make illegal and enjoin from the further use of said brand.

3070. Duty of person importing branded stock. [Ch. 90, '97.] § 8. It shall be the duty of any person who after the passage of this act brings into any county of this state and turns loose for grazing purposes any herd brand or individual animals already branded, to lay before the above committee a statement of the brands of said animals, and if in the judgment of any three of them or a majority of a quorum of said committee, said brands conflict with any previously recorded, it shall be the duty of the owner or manager of said animals to brand them with a brand that the committee shall consider a full and distinguishing mark from all brands there recorded, but the owner shall be enjoined from any further use of the conflicting brand. A failure to comply with the provisions of this section shall render the party so failing liable for all damages resulting from such failure, which damages may be recovered in a civil suit. It is further provided that this section shall apply to all animals now in any county in this state, whose brands are considered by said committee to infringe on brands previously recorded ones.

3071. Conflicts in brands. [Ch. 90, '97.] § 9. In deciding as to the conflict of brands the committee shall reject any that, being the same as one previously recorded, has in addition any of the following, whether placed across, above, below, at either side or encircling the main brand, viz.: a straight bar, a quarter, half or entire circle, a quarter, half or entire diamond, either upright or inverted, the same not constituting a true brand and rendering the owner of the same brand liable to damages by its use, saving only when one or more of these shall be filed by the owner of the first record of the main brand in which case it may be accepted. The committee shall reject any brand, formed by repetition of any letter, number or figure which shall have been previously recorded, whether to be placed on the same or on a different part of the animal; the exclusive right of the first record to the letter, number or figure, and to repetition of it, being reaffirmed. They shall also reject all brands known as solid brands, and all ear marks which shall remove to exceed one-half of the ear. A variation in the size of a letter, number

or figure shall not constitute a new brand and shall be rejected. A combination of letters, numbers or figures may be permitted, though the same letters, numbers or figures may have been recorded, single or together, if in the judgment of the whole committee said combination is so different from any previous record as to constitute a new brand with no danger of infringement; but in this case the objection of one member shall reject.

3072. Brand as evidence of ownership. [Ch. 90, '97.] § 10. In all suits in law or in equity, or in any criminal proceedings, when the title to any stock is involved, the brand on any animal shall be prima facie evidence of the ownership of the person whose brand it may be; provided, that such brand has been duly recorded as provided by law. Proof of the right of any person to use such brand shall be made by a copy of the record of the same, certified (in case of a registry under the law heretofore in force) by the register of deeds of that county or of any county under which the same is recorded, under the hand and seal of office of such register of deeds or (in all cases of recording brands under this act) by the secretary of state, under the hands and seal of his office.

3073. Penalty for violation. [Ch. 90, '97.] § 11. Any person or persons who shall violate or fail to obey the provisions of this act, or shall continue the use of any brand or mark after the same has been rejected by said committee, or shall continue to use any brand or mark after the said committee shall have decided that the same conflicts with a previously recorded brand or mark, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

3074. Not retroactive. [Ch. 90, '97.] § 12. Nothing in this act contained shall be construed to in any manner impair the property rights of owners of live stock in this state, under the laws heretofore in force.

3075. Penalty for misbranding. Any person or persons who shall, with intent to defraud, brand or misbrand, mark or mismark any neat cattle, horse, sheep, goat, ass or mule not his own; any person who shall intentionally brand over a previous brand, or in any manner alter, deface or obliterate a previous brand, or shall cut out or obliterate a previous mark or brand, on any neat cattle, horse, sheep, goat, ass or mule, shall upon conviction in any court of competent jurisdiction be punished by imprisonment in the state prison not exceeding ten years, or by

imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars. [C. L. 2273.]

3076. Hides of slaughtered animals to be preserved. Any person who shall slaughter any neat cattle for any purpose in this state, shall keep the hides of such cattle at his or their place where such cattle were slaughtered for a period of not less than ten days, and such hides shall at all times be subject to inspection by stock growers and their agents and employes. [C. L. 2274.]

3077. Unlawful to destroy brand. It shall be unlawful for any person to cut or destroy any brand upon, burn or in any manner to destroy the hides of any neat cattle within this state. [C. L. 2275.]

[Ch. 75, '91.] Provided, that the provisions of this act shall apply only to branded hides.

3078. Misdemeanor. Any person or persons who shall violate the provisions of the two foregoing sections of this act shall be guilty of a misdemeanor. [C. L. 2276.]

HERDING AND DRIVING.

3079. Stock grower and drover defined. Every person who shall keep neat cattle, horses, mules, sheep, swine or goats for their growth or increase within the state, shall be deemed a stock grower. Any person who shall drive or bring live stock into or through this state shall be deemed a stock drover. [C. L. 2277.]

3080. Driving off stock of another. Any stock drover or his employe, who shall drive off any neat cattle, horses, asses, swine or sheep belonging to another, intentionally or through neglect, shall on conviction thereof by any court of competent jurisdiction be fined in any sum not more than one hundred dollars for each and every head of cattle, horses, mules, swine or sheep so driven off. [C. L. 2278.]

3081. Descriptions. In any indictment or complaint under this act the description of any kind or class of live stock shall be deemed sufficient, if described as live stock, and for the purpose of this act the proof of brand shall be deemed to be prima facie evidence of ownership of such stock. [C. L. 2279.]

3082. Running at large by certain animals prohibited. No stallion over the age of eighteen months, nor any Mexican, Texan or Cherokee bull over the age of ten months, nor any Mexican ram over the age of eight months, shall be permitted to run at large in the state of South Dakota. The owner or person in charge of such animal or animals that

are prohibited from running at large by this section, who shall permit such animal or animals to run at large, may be fined for each offense not less than ten dollars nor more than fifty dollars, and it shall be lawful for any person to castrate or cause to be castrated any such animal found running at large; provided, that if any person shall castrate any stallion, bull or ram, and it shall on proper evidence before any competent court be proved to the satisfaction of said court that such animal was not of a class of stock prohibited from running at large by this act, said person shall be liable for damages to the amount of the value of said animal so castrated, and the costs of suit; provided, that for the purpose of this act, any bull possessing not more than one-half Texan, Mexican or Cherokee blood shall not be deemed a Texan, Mexican or Cherokee bull, as the case may be, and any ram possessing not more than one-half Mexican blood shall not be deemed a Mexican ram. [C. L. 2280.]

3083. Driving stock and trespassing. Any person owning or having charge of any drove of cattle, horses, swine or sheep numbering one head or more than that number in any such drove of cattle, horses, swine or sheep, who shall drive the same into or through any county of South Dakota of which the owner is not a resident or land owner or stock grower, and when the land in said county is already occupied by settlers on ranches, it shall be the duty of said owner or person in charge of said horses, cattle, swine or sheep to prevent the same from mixing with the cattle, horses, swine or sheep belonging to actual settlers, and also to prevent said drove of cattle from trespassing on such land as may be the property of the actual settler, or may be held by him under a homestead, pre-emption, timber culture or leasehold right and used by him for the grazing of animals, growing hay or timber, or other agricultural purposes, or doing injury to the ditches made for irrigation of crops. If any owner or owners or persons in charge of any such drove of cattle, horses, swine or sheep shall wilfully, carelessly or negligently injure any resident within the state, by driving said drove of cattle, horses, swine or sheep from the public highways and herding the same on the lands occupied and improved by settlers in possession of the same, it shall constitute a misdemeanor and shall be punished by a fine of not less than five dollars and not more than twenty-five dollars, at the discretion of the court, and render the owner or owners or persons in charge of the drove of cattle, horses, swine or sheep liable for such damages as may be done to the property of said settler. [C. L. 2281.]

3084. Wrongful driving off of stock. When the stock of any person shall be driven off its range within South Dakota, against his

will, by the owners of any drove, and the same shall be found among such drove, every person engaged as drover of said drove shall be liable for damages to the party injured to the amount of the full value of the animal for each head so driven off, together with all costs accruing in the trial of said cause, and said herd of stock shall be liable for the same, or a sufficient number to cover all damages and costs. [C. L. 2282.]

- **3085. Duty of drover when stock mixes.** When the stock of any resident of the state of South Dakota shall mix with any drove of any animals, it shall be the duty of any drover or drovers or persons in charge of such drove to cut out and separate such stock from said droves immediately. Every person, either owner or drover or otherwise connected with said drove, who shall neglect to comply with the provisions of this section shall be fined in any sum not exceeding one hundred dollars, upon conviction in any court of competent jurisdiction. [C. L. 2283.]

3086. Concerning skinned dead animals. It shall be unlawful for any person other than the owner or his agent or employe to skin or remove from the carcass the skin, hide or pelt of any neat cattle, swine or sheep found dead, except when such stock is killed by railroad trains, when the employes of such railroads may remove the hides from stock so killed. [C. L. 2284.]

WOLF BOUNTY.

3087. State wolf bounty. [Ch. 136, '99.] § 1. There shall be paid, as hereinafter provided, for the killing within the boundaries of this state, of the animals hereinafter mentioned, the following bounties, to-wit: For each coyote so killed \$1.00, for each wolf so killed \$3.00, and for each mountain lion so killed \$3.00.

3088. How obtained. [Ch. 136, '99.] § 2. Any person killing in this state, after the passage of this act, one or more of the above named animals, and who shall desire to claim the bounty therefore, shall, within sixty days from the killing thereof, exhibit the scalp with the ears entire and tail connected of such animal to the county treasurer of that county in this state in which said animal shall have been killed, and shall at the same time file with the treasurer his affidavit in writing, taken before him as such treasurer, which affidavit shall be substantially in the form following, to-wit:

I do solemnly swear that the skin...., or the scalp ... with the ears entire and the tail.... connected, by now exhibited to the treasurer of the county of state of South Dakota, w..... taken from animal.... by killed within said county and state since the passage of the act of the legislature of the state of South Dakota, approved the..... day of, 1899.

3089. Duty of treasurer. [Ch. 136, '99.] § 3. It shall be the duty of each treasurer of each county in which the scalp with the ears entire and tail connected of any of the above animals is exhibited to him,

to examine such scalp with the ears entire and tail connected so exhibited, and if he find the scalp with the ears and tail connected have not been patched, covered, punched or cut, he shall then mark each ear by punching therein a hole not less than one-half inch in diameter, and shall then return each scalp, ears and tail to the one exhibiting the same.

3089a. Certificate to state auditor. [Ch. 136, '99.] § 4. If, upon the filing of the affidavit required in section 2 and upon the examination required in section 3 of this act, it shall appear to the satisfaction of such treasurer that such animal was killed in said county and state and that the scalp with the ears entire and tail connected has not been covered, patched, punched or cut, he shall issue and deliver to the person exhibiting the same a certificate addressed to the auditor of the state of South Dakota, substantially in the form following, to-wit:

STATE OF SOUTH DAKOTA }
County of } ss.

I, county treasurer of county, South Dakota, do hereby certify that has exhibited to me this day of 189....., the skin or scalp with the ears entire and the tail connected of and has filed his affidavit with me that he killed such animal from which the skin or scalp with the ears entire and tail connected w..... killed in the above county.

And I further certify that I have examined and punched the ears of the above mentioned skin... or scalp... with the ears entire and tail... connected, according to law, this day of , 189.....

And I further certify that there is due to the within named the sum of (\$) dollars.

[SEAL]

County treasurer of county, South Dakota.

Said certificate shall show the number and species of skin or skins or parts of skin so examined or punched and shall be signed by the county treasurer in his official capacity, attested by his seal. The treasurer shall receive from the party to whom the certificate is issued, the sum of ten cents for each and every skin so punched, which shall be in full compensation for all the services rendered.

3089b. Record to be kept. [Ch. 136, '99.] § 5. It shall be the duty of the county treasurer of each and every county wherein said animal was killed, to keep a record in a bound book kept for such purpose, of all skins or parts of skin, together with the date of their receipt and the name of the person delivering the same, and said book shall be transmitted to his successor on the expiration of his term of office. Upon the receipt of said certificate it shall be the duty of the state auditor to file the same in his office, and he shall give the person presenting such certificate a warrant on the state treasurer drawn on the bounty fund for the amount specified, in accordance with the law. The person presenting such warrant upon the state treasurer shall receipt upon the back of it the full amount received and the state auditor and the state treasurer shall keep an account of all warrants so issued and paid.

3089c. Penalty. [Ch. 136, '99.] § 6. Any person exhibiting to the county treasurer of any county in this state, for the purpose of obtain-

ing said bounty, the skin or scalp with ears entire and tail connected of any coyote, wolf or mountain lion that has been killed prior to the passage of this act, or that was killed outside the boundaries of the county and state aforesaid, or who shall patch up any skin or part of skin with intent to defraud the state, or who shall sign the certificate herein provided for, without first examining the scalp with the ears entire and tail connected, or who shall intentionally evade or violate any of the provisions of this act, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than two months nor more than six months, or by both such fine and imprisonment, together with all costs. One-half of such fine shall be paid to the informer and the other half into the county general fund of the county in which such conviction was had.

3089d. Perjury or fraud — penalty. [Ch. 136, '99.] § 7. Any person or persons making a false statement under oath as provided in this act, shall be liable to prosecution for perjury and suffer the penalties of the same as provided by the laws of this state. Any person or persons driving, baiting, enticing, bringing from outside the state or breeding or rearing any of the animals mentioned in this act, for the purpose of procuring bounties thereon, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than fifty dollars nor more than two hundred dollars, in the discretion of the court, for each and every offense so committed.

3089e. Oath. [Ch. 136, '99.] § 8. Any county treasurer of this state shall be authorized to administer oaths for the purpose of this act.

3089f. Appropriation. [Ch. 136, '99.] § 9. For the purpose of carrying out the provisions of this act there is hereby appropriated out of the general fund the sum of five thousand (\$5,000.00) dollars for the year 1899 and each fiscal year thereafter, or so much thereof as may be necessary and not otherwise appropriated.

3089g. Unorganized counties. [Ch. 136, '99.] § 10. The provisions of this act shall apply to the unorganized counties in this state, and the county treasurer of the organized county to which any unorganized county is attached for judicial purposes, shall issue certificates under the provisions of this act for all skins that may be presented to him by residents of said counties, in the same manner as if said skins

were presented by residents of the organized county to which said unorganized county or counties are attached.

3089h. Other bounties. [Ch. 136, '99.] § 11. The county commissioners of each county in the state of South Dakota may offer a bounty of not more than \$3 for each and every wolf killed within the limits of the county.

GOPHER BOUNTY.

3090. County commissioners may offer bounty. [Ch. 31, '93.] § 1. That the county commissioners of any county in the state of South Dakota may offer a bounty of not less than five (5) cents or more than ten (10) cents each for the destruction of pocket gophers within the limits of their county and they shall have power to provide such rules and regulations for the payment of such bounty as they may deem necessary.

3091. Blanks. The county commissioners are hereby authorized to furnish all blanks and make all needful regulations for the carrying out of this act. [C. L. 2288.]

3092. Fee of clerk. The county clerk shall be entitled to a fee of twenty-five cents for each affidavit, to be paid by the county. [C. L. 2289.]

3093. Killing dog, when lawful. It shall be lawful for any person to kill any dog off of the premises of the owner of such dog found chasing or worrying sheep. [C. L. 2290.]

LIABILITY FOR VICIOUS DOGS.

3094. Owner of dog liable for damages. Any person keeping, owning or harboring a dog that shall chase, worry or kill horses, mules, cattle or sheep, shall be liable for all damages committed by such dog upon any horses, mules, cattle or sheep, to the owner or owners of such horses, mules, cattle or sheep, and shall not be entitled to any benefit from the laws exempting property from execution, but all property shall be subject to execution and judgment for such damages and costs. [C. L. 2291.]

ESTRAYS.

3095. Taken by residents only. No person shall take up an stray animal except in the county wherein he or she resides and is a house-

holder 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 state, and at a distance of ten miles from any habitation. [C. L. 2292.]

3096. Limitation in time. No person shall take up an estray animal mentioned in the next section between the first day of October and thirty-first day of March inclusive, unless the same be found trespassing upon the premises or within the inclosure of the person taking up the same. [C. L. 2293.]

3097. Notice to be published. [Ch. 64, '97.] Every person who shall take up any estray horse, mare, mule, ass or any head of neat cattle, sheep, hog or goat, shall within ten days thereafter give notice of the finding of such animal by sending to the county auditor of the county wherein such estray was taken up, a description of such estray and the marks and brands thereon, together with his name and post-office address, and if his residence be not within a city, the section, township and range and number of such residence, and the county auditor, to whom such notice shall be sent, shall file such notice in his office and shall answer any inquiries concerning estrays which may be properly directed to him or asked of him, and if the same be not called for or claimed by any person within fifteen days after the sending of such notice, 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 has sent such description as provided by law to the county auditor of the county wherein he resides; such affidavit shall be made and subscribed in the docket of such justice, and shall be sufficient proof of the notice of such estray as herein required. [C. L. 2294.]

3098. Appraisement jury. 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 in writing, to be subscribed and sworn to by them, 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 the justice shall thereupon enter such certificate in his docket. [C. L. 2295.]

3099. Justice to publish description. 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. [C. L. 2296.]

3100. Report to register of deeds. [Ch. 63, '97.] Such justice shall also transmit a copy of such notice and the 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. [C. L. 2297.]

3101. Record of appraisement. [Ch. 63, '97.] Every register of deeds upon receiving such notice and certified copy of appraisement shall forthwith cause the certificate of appraisement to be recorded in a book to be kept in his office to be entitled "the estray register" and shall immediately forward a copy of said notice to the public printer hereinafter provided, together with the amount required to pay for two insertions of said notice in the paper published by said printer. The secretary of state shall select and contract with a printer to print all such advertisements of estrays and shall immediately notify the register of deeds of each organized county of the name and post-office address of such printer and the price of such advertisement. Such contract shall be made on the first Monday in January annually and if a vacancy shall from any cause occur the secretary shall forthwith fill it by a new contract. The printer thus selected shall once in each week issue a newspaper or printed sheet, in which he shall print two successive insertions of all estray notices sent to him and shall send one copy of each paper issued to the register of deeds of each county in the state, who shall receive, file and preserve the same to be examined by any person who may desire to see them. The register of deeds is hereby required to subscribe for one copy of such paper selected by the secretary of state for the publication of estray notices, and the amount of the subscription price shall be allowed and paid out of the treasury of the county. [C. L. 2298.]

3102. Two or more animals. 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 appraisalment, and the same fees are allowed as for the advertisement or appraisalment of one estray. [C. L. 2299.]

3103. Claimant must pay charges. 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 appraisalment 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, and his reasonable charges for keeping and caring for such estray. If the parties cannot 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. [C. L. 2300.]

3104. Disposition of estray. If any such estray be not claimed and taken away within one year after the appraisalment thereof, as hereinbefore provided, and if the person taking up such estray shall have caused the same to be advertised and appraised as herein provided, and shall not in other respects have violated the provisions of this subdivision of this chapter, and if the appraised value of such estray does not exceed fifty dollars, the property therein shall immediately vest in the person taking the same up. [C. L. 2301.]

3105. When value is over fifty dollars. If the appraised value of any estray exceeds fifty dollars, and the same is not called for within one year after the appraisalment 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 appraisalment 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. [C. L. 2302.]

3106. Treasurer disposes of money. 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. [C. L. 2303.]

3107. Description filed. Whenever any sum of money is paid into the county treasury by virtue of section twenty-three hundred and two, 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. [C. L. 2304.]

3108. Fees a first lien. 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. [C. L. 2305.]

3109. Unlawful taking — penalty. 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 wilfully 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 use-

less because of ill treatment inflicted or neglect received from the person taking up such estray. [C. L. 2306.]

3110. Work of estray. Any person taking up any estray 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 charge or receive any compensation for the keeping thereof. [C. L. 2307.]

3111. Loss of estray. If any estray after being duly advertised and appraised as herein provided 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 responsible therefor. [C. L. 2308.]

3112. Select county seat. The place of sale of estrays under this subdivision shall be at the county seat of the county in which the estray is appraised. [C. L. 2309.]

[For exemption of the counties of Lawrence, Pennington, Custer, Mandan and Forsyth from the provisions of sections 2302 to 2309, inclusive, see chapter 58, session laws of 1881.]

3113. Lost goods. 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 for estrays. [C. L. 2310.]

IMPORTATION OF TEXAS CATTLE.

3114. Importation, when unlawful. It shall be unlawful for any person or persons, railroad company or other corporation or any association of persons to bring into this state any Texas or Cherokee cattle except between the first day of November of each year and first day of February following; provided, that the right to bring into this state any such cattle shall in no case be any defense for any injury sustained by any one by reason of the bringing of such cattle into this state. [C. L. 2311.]

3115. Unlawful possession. It shall be unlawful for any person or persons, railroad company or other corporation or association of persons whatever within this state, to own or have in possession or control any Texas or Cherokee cattle at any time, which may have been brought into this state at any time except between the first day of November of each year and the first day of February following. [C. L. 2312.]

3116. Penalty. Any person or persons who shall bring into this state or cause to be brought therein, any Texas or Cherokee cattle except at the time permitted in section twenty-three hundred and eleven, or who shall own, possess or control any such cattle except as allowed

in section twenty-three hundred and twelve, shall be guilty of a misdemeanor and shall be liable to indictment and conviction, fine and imprisonment, and shall be fined upon conviction in any sum not exceeding ten thousand dollars nor less than two hundred dollars, and in addition to such fine may be imprisoned, in the discretion of the court. Any such person may in the first instance be brought before any justice of the peace and be held to bail to appear before the district court in the county or subdivision where such justice of the peace shall reside, to answer to any charge as may be preferred against him; and any railroad conductor or servant, agent or officer of any railroad who shall bring any such cattle into this state upon any railroad or vessel connecting with such railroad, or carry any such cattle upon any railroad or vessel connecting therewith from one point to another within this state, shall be deemed to have possession of such cattle within the meaning of this section. [C. L. 2313.]

3117. Disposition of fines. Any and all fines which may be collected under section twenty-three hundred and thirteen shall be paid into the county treasury and be subject to the order of the board of county commissioners for the purpose of being divided pro rata among the persons who may have suffered loss or damage on account of any such cattle being brought into or being within this state, upon proof of loss or injury, in such manner as said board shall direct; but if no proof of such loss or injury shall be made to such board of county commissioners within one year after the collection of any such fine, then it shall be the duty of such board to order the said county treasurer to credit such fine or fines to the general county fund. [C. L. 2314.]

3118. Who liable for damage. Whenever in any case any damage or loss shall or may be occasioned to any person or persons, resulting in any manner from any such Texan or Cherokee cattle having been brought into this state at any time by any person or persons, railroad company or any other corporation or association of persons, then such person so bringing into, or owning, possessing or controlling such cattle in this state shall be liable jointly or severally to any person or persons who may suffer loss or damage by reason of such bringing or conveying into, possessing, owning or controlling within the state any such cattle; and in any action for the recovery of damages or compensation for any loss or damage which may be sustained by any person or persons from any such cattle, it shall be sufficient for the plaintiff or plaintiffs to show that the injury of which he or they may complain arose from any such Texas or Cherokee cattle which may have been owned or had in possession or brought into the state at any time within the year by any such defendant, or that such cattle so brought in, owned

or possessed had been where such loss or damage had been sustained. And it shall not be necessary for the plaintiff to show that the injury of which he may complain accrued while any such Texas or Cherokee cattle were in the possession or ownership or control of any such defendant or defendants, it being the intention of this section to make all persons or corporations liable to injured persons in the first instance for any injury which may arise from disease spreading or communicating from such Texan or Cherokee cattle so brought into or owned, possessed or controlled by them in this state. [C. L. 2315.]

3119. Right to import no defense to action for damages. The right to bring into this state Texas or Cherokee cattle between the first day of November of each year and the first day of February following, shall in no case be any defense for any loss or damage that may accrue from such cattle to any person; nor shall any right to own, possess or control any such cattle in any case be any defense for any injury or loss which may arise to any person by reason of such right to own, possess or control such cattle. In all actions or prosecutions for any loss or injury which may arise or accrue to any person or persons by reason of any injury or loss done or caused to be done to any native or domestic cattle, from or by any such Texas or Cherokee cattle, the proof of the loss of any native or domestic cattle or any damage thereto, and the amount of such loss or damage, and proof that any such defendant or defendants brought into this state, or owned, possessed or controlled in this state at any time any such Texas or Cherokee cattle which may have caused such injury or loss, shall prima facie entitle the plaintiff or plaintiffs to recover. And it shall be competent for any jury to render a verdict and any court or justice of the peace to render a judgment in any such case upon the opinion of witnesses as to whether or not any such Texas or Cherokee cattle caused the injury complained of in such action. [C. L. 2316.]

3120. Proceeding, when disease spreading. In case any such Texas or Cherokee cattle shall be found spreading or communicating any disease among the native domestic cattle of this state, it shall be the duty of any judge of the district court, or justice of the peace, upon oath of any householder setting forth that such Texas or Cherokee cattle are spreading or communicating disease among native or domestic cattle within this state, and the name of the owner or party in whose possession or control such Texas or Cherokee cattle may be, to forthwith issue a warrant to any sheriff or constable of the county or township, commanding him forthwith to arrest and imprison in some safe place such cattle so spreading or communicating disease, and to summon the owner thereof or the person or persons found in the possession of such Texas

or Cherokee cattle, to appear forthwith before such judge or justice of the peace and show cause why such Texas or Cherokee cattle shall not be impounded until the first day of November following, and after allowing the prosecuting witness and any such defendant named in such warrant reasonable time to be heard, the said judge or justice of the peace shall proceed to hear and determine whether such Texas or Cherokee cattle have so spread or communicated disease; it shall be the duty of such judge or justice of the peace to order the officer in charge of such Texas or Cherokee cattle to impound them and keep them to themselves until after the first day of November following, when it shall be the duty of the officer in charge of such cattle so impounded to present to the owner or person entitled to the possession of such cattle a sworn statement of the costs of taking and keeping and impounding such cattle, including the cost of building the pound and providing materials for the same in case the board of county commissioners or township supervisors where such cattle were impounded had ordered the pound to be built for the purpose of impounding such cattle, and demand payment of the same together with the costs of such trial aforesaid; and upon payment of the same he shall deliver such cattle to the owner or person entitled to the possession thereof. [C. L. 2317.]

3121. Texas cattle defined. Texas or Cherokee cattle as mentioned in this act shall be taken to mean a class or kind of cattle without reference to where they may have come from; provided, that that portion of this state west of the Missouri river is exempted from the provisions of this act; but the right to bring into, own, possess or control such cattle in such exempted territory shall give no right to send, convey or cause to be sent or conveyed such cattle into that part of the territory subject to the provisions of this act, or own or possess the same therein, except that such cattle may be shipped or conveyed by themselves across said river to an inclosure upon the left bank thereof upon the line of any railroad crossing this state, and may be conveyed from such inclosure across and without this state by continuous passage in cars upon said railroad. [C. L. 2318.]

3122. Object of act. The object of this act is hereby declared to be for the purpose of preventing the spread of pestilence and disease among native and domestic cattle of this state east and north of the Missouri river, which arises and is communicated from that class of cattle described in this act as Texas and Cherokee cattle, and to protect the native and domestic cattle of this state from destruction from the poison, disease or sickness which it is believed is communicated from such Texas or Cherokee cattle. [C. L. 2319.]

CONTAGIOUS DISEASES — VETERINARY SURGEON.

3123. Veterinary surgeon appointed. The governor of the state is hereby authorized to nominate and by and with the advice and consent of the council appoint a competent veterinary surgeon who shall be known as the "veterinary surgeon," and on entering on his duties shall take an oath to well and truly perform his duties as provided by law. [C. L. 2320.]

3124. Duties. The duties of said state veterinary surgeon shall be as follows:

1. To investigate any and all cases of contagious or infectious diseases among cattle, horses, mules and asses in this state of which he may have a knowledge or which may be brought to his notice by any resident in the locality where such disease exists; and it shall be his duty, in the absence of specific information, to make visits of inspection to any locality where he may have reason to suspect that there are contagious or infectious diseases.

2. To inspect under the regulations of this act, all cattle, horses, mules and asses which may be brought into this state, in any manner whatever, from or through such state, territory, or foreign country as the governor shall declare by proclamation in quarantine for purposes of inspection for contagious or infectious diseases. And after the making of such proclamation, it shall be the duty of the owner or person in charge of any domestic animals or Texas cattle arriving in this state from or through any state, territory or foreign country against which quarantine has been declared to notify the veterinary surgeon without delay, and not to allow such animals or any of them to leave the place of arrival until they shall have been examined by the said surgeon and his certificate obtained that all are free from disease; and no animal pronounced unsound from disease by the veterinary surgeon shall be turned loose or allowed to run at large, or removed or permitted to escape, but shall be held subject to the order of the veterinary surgeon. Any person failing to comply with this provision shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than fifty nor more than five hundred dollars for each offense, and shall be liable for any damage and loss that may be sustained by any person or persons by reason of the failure of such owner or agent to comply with the provisions of this section; provided, that the owner of horses, mules or asses ridden under the saddle or driven in harness into this state, or the owner of oxen driven into this state under the yoke, and any person coming into this state with his team or teams shall not be required to notify the state veterinary surgeon or await the inspection of such work oxen, team or teams, but he shall be liable for all loss or damage to any

person or persons from or by reason of any contagious or infectious disease brought into this state by his animals; and no cattle, horses, mules or asses shall be held in quarantine in this state for a longer period than ninety days unless contagious or infectious disease shall be found to exist among them. [C. L. 2321.]

3125. Quarantine — notice to governor — expenses. In all cases of contagious or infectious disease among domestic animals or Texas cattle in this state, the veterinary surgeon shall have authority to order the quarantine of the infected premises, and in case such disease shall become epidemic in any locality in this state the state veterinary surgeon shall immediately notify the governor of the state, who shall thereupon issue his proclamation forbidding any animal of the kind among which said epidemic exists to be transferred from said locality, without a certificate from the veterinary surgeon showing such animal to be healthy. The expenses of holding, feeding and taking care of all animals quarantined under the provisions of this act shall be paid by the owner, agent or person in charge of said stock. [C. L. 2322.]

3126. Slaughter of animals, when ordered. In case of any epidemic diseases where premises have been previously quarantined by the veterinary surgeon as before provided, he is further authorized and empowered, when in his judgment necessary, to order the slaughter of any and all diseased animals upon said premises and of all animals that have been exposed to contagion or infection, under the following restrictions: Said order shall be a written one and shall be made in duplicate, and there shall be a distinct order and duplicate for each owner of the animals condemned, the original of each order to be filed by the veterinary surgeon with the governor of the state, and the duplicate given to said owner. And, further, before slaughtering any animal or animals that have been exposed only and do not show disease, the veterinary surgeon shall call in consultation with him two respectable practicing veterinarians or physicians, residents of the state, or if this is impossible then two reputable and well-known freeholders, residents of the state, and shall have written indorsements upon his order of at least one of said consulting physicians or freeholders, stating that said action is necessary, before such animal or animals shall be slaughtered. [C. L. 2323.]

3127. Appraisal of slaughtered animals. Whenever as herein provided the veterinary surgeon shall order the slaughter of one or more animals, he shall at the time of making such order notify in writing the nearest available justice of the peace, who shall thereupon summon three disinterested citizens, who shall be freeholders of the neighborhood, to act as appraisers of the value of such animals. Said appraisers before

entering upon the discharge of their duties shall be sworn to make a true and faithful appraisalment without prejudice or favor. They shall after making their appraisalment return certified copies of their valuation, a separate one being made for each owner, together with an accurate description of each animal slaughtered (giving all brands, ear-marks, wattles, age, sex and class as to whether American, half-breed or Texas) to the justice of the peace by whom they were summoned, who shall, after entering the same upon his record and making an indorsement upon each, showing it to have been properly recorded, return it, together with the duplicate order of the veterinary surgeon, to the person or persons owning the animals slaughtered; and it shall be the duty of the veterinary surgeon to superintend the slaughter of such animals as may be condemned, and also the destruction of the carcass, which latter shall be by burning to ashes or burying the same, which burial shall not be less than six feet under the ground, and shall include every part of the animal, including excrement, as far as possible, and the hide shall be so cut and scarified as to be useless. He shall cause the said slaughter, burning or burial to be done as cheaply as practicable. [C. L. 2324.]

3128. Notice to county commissioners — annual reports. The veterinary surgeon shall make a report at the end of every year to the governor, of all matters connected with his work, and the governor shall transmit to the several boards of county commissioners such parts of said report as may be of general interest to the breeders of live stock. The governor shall also give information in writing, as soon as he obtains it, to the various boards of county commissioners, of each case of suspicion or fresh eruption of disease in each locality, its cause, and the measures adopted to check it. [C. L. 2325.]

3129. Governor's proclamation — penalty for violation. Whenever the governor of the state shall have good reason to believe that any disease covered by this act has become epidemic in certain localities in another state or territory or foreign country, or that conditions exist which render domestic animals and Texas cattle liable to convey disease, he shall thereupon by proclamation schedule such localities and prohibit the importation from them of any live stock of the kind diseased into this state, except under such restrictions as he, after consultation with the territorial veterinary surgeon, may deem proper. Any corporation or any person or persons who, after the publication of such proclamation, shall knowingly receive in charge any such animal or animals from any one of said prohibited districts and transport or convey the same within the limits of this territory, shall be deemed guilty of a misdemeanor, and upon conviction be fined not less than one thousand dollars

and not more than ten thousand dollars for each and every offense, and shall further become liable for any and all damages and loss that may be sustained by any person or persons by reason of the importation or transportation of such prohibited animals. [C. L. 2326.]

3130. Duty of person to report — penalty. It shall be the duty of any person or persons who shall have or suspect that there is upon his or their premises, or upon the public domain, any case of contagious or infectious disease among domestic animals or Texas cattle, to immediately report the same to the state veterinary surgeon, and a failure so to do, or any attempt to conceal the existence of such diseases, or to wilfully or maliciously obstruct or resist the said state veterinary surgeon in the discharge of his duty as hereinbefore set forth, shall be deemed a misdemeanor, and any person or persons who shall be convicted of any one of the above acts or omissions shall be fined not less than fifty dollars nor more than five hundred dollars for each and every such offense, and shall forfeit all claims to indemnity for loss from the state; and upon conviction a second time shall, in addition to the above-named fine, be imprisoned in the county jail for a term not less than thirty days nor more than six months. [C. L. 2327.]

3131. Regulations. The following regulations shall be observed in all cases of disease covered by this act:

1. It shall be unlawful to sell, give away or in any manner part with any animal affected with or suspected of being affected with contagious or infectious disease; and in case of any animal that may be known to have been affected with or exposed to any such disease within one year prior to such disposal, due notice of the fact shall be given in writing to the party receiving the animal.

2. It shall be unlawful to kill for butcher purposes any such animal; to sell, give away or use any part of it, or its milk, or to remove any part of the skin. A failure to observe these provisions shall be deemed a misdemeanor, and on conviction shall be punished by a fine not less than one hundred dollars nor exceeding five hundred dollars. It shall be the duty of the owner or person having in charge any animal affected with or suspected of being affected with any contagious or infectious disease, to immediately confine the same in a safe place, isolated from other animals, and with all necessary restrictions to prevent dissemination of the disease until the arrival of the veterinary surgeon. The above regulations shall apply as well to animals in transit through the territory as to those resident therein; and the veterinary surgeon or his duly authorized agent shall have full authority to examine, whether in car yards or pastures or stables or upon the public domain, all animals passing through the state or any part of it, and, on detection or suspicion

of disease, take possession of and treat and dispose of animals in the said manner as is prescribed for animals resident in the state. [C. L. 2328.]

3132. Claims against the state, how paid. All claims against the state arising from the slaughter of animals under the provisions of this act shall, together with the order of the veterinary surgeon and the valuation of the appraisers in each case, be submitted to the governor, who shall examine them without unnecessary delay, and for each one that he finds to be equitable and entitled to indemnity under this act shall issue his warrant on the stock indemnity fund in the hands of the state treasurer, for the sum named in the appraiser's report, to the person so entitled thereto. In auditing any claim under this act it shall be the duty of the governor to satisfy himself that it does not come under any class for which indemnity is refused by this act, and he shall require the affidavit of the claimant to this fact, or if the claimant be not cognizant thereof, then of some reputable person who is cognizant thereof, and also the affidavit of the veterinary surgeon, whose duty it shall be to inform himself fully of the facts, that in his opinion the claim is legal and just, and the governor may at his discretion require further proof. [C. L. 2329.]

3133. Carcass, how disposed of — duty of person having affected stock. It shall be the duty of any person or persons owning or having in their possession any bovine affected with any of the following diseases, viz., rinderpest, foot and mouth disease, pleuro-pneumonia, anthrax or Texas fever, or any equine affected with glanders, to immediately notify the veterinary surgeon, who shall destroy or cause to be destroyed the same by burning to ashes or burying the same, which burial shall not be less than six feet under ground, and shall include every part of the animal, and the hide shall be so cut and scarified as to be useless. Any person or persons who shall fail or neglect to comply with this provision shall be guilty of a misdemeanor, and shall be punished by a fine not less than one hundred dollars, or more than one thousand dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, and the owner or owners of such diseased animal or animals shall further be liable for any or all damages and loss that may be sustained by any person by reason of failing to comply with the foregoing provision. [C. L. 2330.]

3134. Right to indemnity limited — value, how determined. The right to indemnity under this act is limited to animals destroyed by reason of the suspected existence of some epizootic disease, generally fatal and incurable, such as rinderpest, hoof and mouth disease, pleuro-pneumonia, anthrax or Texas fever among bovines and glanders among horses. The indemnity granted shall be the ordinary value of the animal as deter-

mined by the appraisers, without reference to its diminished value cause by the suspected existence of disease, or by having been exposed to any of the contagious diseases last above enumerated. It shall be paid to the owner upon his application and the presentation of the proofs prescribed herein; and it shall be the duty of said owner to make such application within six months after the slaughter of the animal for which payment is claimed, failing which such claim shall be barred by limitation. Such payment shall be made by the state treasurer as herein provided, and from the fund provided by this act; provided, however, that no bovine shall be appraised for a higher value than fifty dollars, except registered pedigreed animals, which shall not be valued to exceed one hundred and fifty dollars. No equines shall be appraised for a higher value than one hundred dollars, except registered pedigreed animals, which shall not be valued to exceed three hundred dollars. [C. L. 2331.]

3135. Indemnity not allowed, when. The right to indemnity shall not exist, and payment of such shall not be made in the following cases:

1. For animals belonging to the United States.
2. For animals that are brought into the state contrary to the provisions of this act.
3. For animals that are found to be diseased or that are destroyed because they have been exposed to disease before or at the time of their arrival in the state, or for animals that have been shipped into the state from any infectious or quarantine locality.
4. When an animal was previously affected by any other disease which from its nature and development was incurable and necessarily fatal.
5. When the owner or person in charge shall have knowingly or negligently omitted to comply with the provisions of sections twenty-three hundred and twenty-seven and twenty-three hundred and twenty-eight.
6. When the owner or claimant at the time of coming into possession of the animal knew it to be diseased, or received the notice specified in the first clause of section twenty-three hundred and twenty-eight.
7. When the animal or animals have been brought into the state within ninety days immediately preceding the outbreak of disease among or upon them. [C. L. 2332.]

3136. Salaries, expenses, fees. The veterinary surgeon shall receive for his services the sum of two thousand five hundred dollars per annum, together with his necessary traveling expenses actually paid out when in performance of his duty. These payments shall be made from any funds in the state treasury not otherwise appropriated, upon itemized vouchers, signed and sworn to by him and submitted to the state auditor,

who shall draw warrants upon the state treasurer for the amounts if found correct, separate vouchers being made for salary and expenses. No person shall be competent under this act to receive the appointment of veterinary surgeon who is not at the date of his appointment a graduate in good standing of a recognized college of veterinary surgeons, and of not less than five years' actual practice. He shall hold his office for two years. He may be removed for cause by the governor, who shall also have power to fill the vacancy as hereinbefore provided. The appraisers herein provided for shall each receive three dollars for each day or part of a day they may be actually employed as such, which shall be paid from the state treasurer out of the stock indemnity fund hereinafter provided, upon vouchers which bear the certificate of the justice who summoned them. The justice of the peace shall receive for his services the fees provided by law for similar services, to be paid out of the county general fund. The veterinarians, physicians or freeholders called in consultation by the veterinary surgeon shall each receive three dollars for each day or part of a day they may be actually so employed, and five cents per mile mileage for distance necessarily traveled, which sums shall be paid from the state treasury out of the stock indemnity fund hereinafter provided for, upon vouchers certified to by the veterinary surgeon; and other incidental expenses connected with his work and made his duty by this act, such as causing animals to be slaughtered and their carcasses to be burned or buried, and disinfecting infected premises, shall be paid from the state treasury out of the stock indemnity fund hereinafter provided for, upon vouchers certified to by him under oath. Before entering upon the discharge of his duties he shall give a bond to the state of South Dakota with good and sufficient surety, in the sum of ten thousand dollars, conditioned for the proper discharge of the same. No constructive mileage shall be paid under this act, nor shall the veterinary surgeon receive any mileage. [C. L. 2333.]

3137. Liability of state limited. The liability of the state for indemnity for animals destroyed, and for fees, costs and expenses incurred under the provisions of this act, in any year, is limited by and shall in no case exceed the amount especially appropriated for that purpose and for that period, by the terms of this act, nor shall the veterinary surgeon or any one else incur any liability on the part of the state under the provisions of this act in excess of the surplus in the stock indemnity fund hereinafter provided; nor shall any act be performed or property taken under the provisions of this act that will become a charge against the state of South Dakota, further than to the extent provided by said stock indemnity fund. [C. L. 2334.]

3138. Stock indemnity fund. Hereafter it shall be the duty, each year, of the state board of equalization, at the time of making the annual assessment, to levy a special tax not exceeding one mill on the dollar upon the assessed value of all cattle, horses and mules in the state, to be known as the stock indemnity fund. Said tax shall be levied and collected by the several counties and paid to the state treasurer in the manner provided by law for the levying, collection and payment of other state taxes. Said fund shall constitute the stock indemnity fund specified by this act, to be used in paying for animals destroyed under the provisions thereof. It shall be used exclusively for that purpose, and shall be paid out by the state treasurer as hereinbefore provided for. [C. L. 2335.]

3139. Place of quarantine selected. The veterinary surgeon shall select the place or places where stock shall be quarantined. [C. L. 2336.]

3140. Fines. All fines collected under the provisions of this act shall be paid into the state treasury and placed to the credit of the stock indemnity fund. [C. L. 2337.]

3141. Duty of state's attorney and attorney general. It is hereby made the duty of the attorney general or state's attorney of the respective counties, to prosecute any case complained of for prosecution, in any justice or district court within the jurisdiction of which any violation of this act may have been had, and on conviction of violating any of the provisions of this act the court may award in addition to the penalties prescribed by law, and add to the judgment such attorney's fees and costs of prosecution as the court may determine just in the premises. [C. L. 2339.]

GLANDERS.

3142. Penalty for possession of affected animals. It shall be and hereby is made unlawful for any person or corporation to own, have in possession or in any manner keep, use or control any horse, gelding, mare, ass or mule infected with the disease commonly known as glanders; and each and every person or corporation that shall knowingly own, possess or in any manner keep, use or control any glandered horse, gelding, mare, ass or mule shall be deemed guilty of a misdemeanor, and shall be punished accordingly, and all such diseased animals shall be summarily destroyed as hereinafter provided. [C. L. 2340.]

3143. Complaint — duty of justices. Whenever complaint in writing shall be made to a justice of the peace of the proper county in this state, verified by oath or affirmation of the complainant, that any per-

son or corporation owns, possesses or in any manner keeps, uses or controls any horse, gelding, mare, ass or mule infected with the disease commonly known as glanders, upon filing such complaint it shall be the duty of said justice immediately to cause notice to be served upon the person or corporation so owning, possessing, keeping, using or controlling said horse, gelding, mare, ass or mule, which notice shall set forth the matter of the complaint and command such person or corporation forthwith to appear before said justice and show cause why the said justice should not issue a warrant for the destruction of such animal, and either complainant or the person or corporation summoned may demand a trial by jury of six men to whom the hearing of the matter shall be submitted, and both parties shall be entitled to witnesses, to be summoned by subpoena as in other actions, and such examination and hearing shall be conducted in all respects as civil actions in such courts, and if the jury or court desire they may cause such person or corporation to bring such animal before them for inspection. Upon the conclusion of the trial court, or jury if trial be had by jury, shall forthwith render a judgment or verdict, stating that the charge in the complaint is or is not true, which judgment or verdict shall be final in the matter. [C. L. 2341.]

3144. Duty of justice after verdict. In case the verdict of said jury shall be that the complaint is true and that such animal is infected with glanders, said justice shall forthwith direct by warrant the owner or person or corporation having such diseased animal in possession forthwith to kill and bury or otherwise destroy the same, which warrant may be served upon such owner or person or corporation having possession of such diseased animal, the same as a summons issued in justices' courts is served; and in the case of a corporation, each officer thereof shall be responsible in this behalf for the acts of the corporation, and service may be made upon any officer thereof. [C. L. 2342.]

3145. Penalty for disobeying warrant. If the owner or person or corporation having possession of such diseased animal, after having been served with the warrant as hereinbefore provided, shall for the period of twelve hours after such service neglect or refuse to kill and bury or otherwise destroy such diseased animal, then in that case such diseased animal shall be forthwith killed and buried or otherwise destroyed upon the order of said justice, directed to the person serving such warrant, or some other competent person to be named by the justice in the order, and the officer or person executing the same shall make return thereof and thereon to the justice. The officer or person executing such order shall be entitled to a fee of ten dollars to be audited and paid as hereinafter provided. [C. L. 2343.]

3146. Justice preserve record and certify costs. The justice of the peace before whom any such proceeding shall be had shall enter in his docket a record of all such proceedings had by and before him pursuant to this act, and shall allow and tax all costs of the justice, officers, jurors and witnesses the same and in like manner as in criminal proceedings in justices' courts, together with the fee provided herein for destroying such animal, which costs and fees shall be certified by him to the board of county commissioners, and shall be audited and paid out of the general county fund the same as costs in criminal actions before justices of the peace; but the justice may tax the cost against the complainant if he finds that the action was malicious or without probable cause, and such judgment for costs shall be enforced as judgments for costs in criminal cases, and execution may issue therefor. [C. L. 2344.]

3147. Importing unlawful. [Ch. 8, '89.] § 1. If any person knowingly import or bring into this state any horse, mule or ass affected by the disease known as glanders or buttonfarcy, or suffer the same to run at large upon the common, highway or uninclosed land, or use, tie or keep the same in any public place, stable or barn, or sell, trade or offer to sell or trade any such horse, mule or ass, knowing or having good reason to believe the same to be so diseased, he shall be deemed guilty of a misdemeanor and shall on conviction be punished by a fine of not less than fifty nor more than five hundred dollars, and in default of payment shall be imprisoned for any period not exceeding twelve months or by both such fine and imprisonment in the discretion of the court.

HOG CHOLERA.

3148. General restrictions. [Ch. 40, '95.] § 1. Any person who shall hereafter knowingly and wilfully bring or cause to be brought into this state any hogs or other domestic animals, infected with con-

tagious disease, or any person who shall knowingly carry or drive, or cause to be carried or driven upon any public highway or within the distance of one mile of any such highway in this state, or who shall knowingly and wilfully suffer or permit any hogs or other domestic animals infected with contagious disease to run at large shall be fined in any sum not to exceed one hundred (100) dollars and shall be liable in a civil action for all damages occasioned thereby.

PREVENTING DISEASE AMONG SWINE.

3148a. Disposition of carcasses. [Ch. 131, '99.] § 1. That it shall be the duty of the owner or person having charge of any swine that have died of disease or having knowledge of their dying, and upon its coming to his knowledge that any of such swine have died of, or have been slaughtered on account of any disease, to immediately burn, or bury the same not less than three feet below the surface of the ground.

3148b. Dealing in carcasses prohibited. [Ch. 131, '99.] § 2. No person shall buy, sell, deal in or give away, or offer to buy, sell or deal in any swine that are diseased or that have died of any disease, or that have been killed on account of any disease.

3148c. Moving of carcasses prohibited. [Ch. 131, '99.] § 3. No person shall convey upon or along any highway or other public ground, or any private land except his own, any diseased swine, or swine that have died of or have been slaughtered on account of any disease. And upon the trial of every information for the violation of the provisions of this section, the proof that any person has hauled or is hauling dead swine within or through, or from any district or municipality or neighborhood thereof, in which swine have been dying, or are at the time dying from any disease, shall be received and acted upon by the court as presumptive evidence that such swine have been hauled, or are being hauled in violation of this section.

3148d. Diseased swine not to run at large. [Ch. 131, '99.] § 4. It shall be unlawful for any person negligently or wilfully to allow his hogs, or those under his control, affected with any disease, to escape his control and run at large.

3148e. Penalty. [Ch. 131, '99.] § 5. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than five nor more than one hundred dollars, or by imprisonment in the county jail not to exceed thirty days, or by both such fine and imprisonment in the discretion of the court.

SHEEP DISEASES.

3149. Quarantine. The owner or the person in charge of any sheep which are now or shall hereafter be affected with the scab or any infectious or contagious disease, shall keep the said sheep securely within some inclosure, or shall herd them at a distance of not less than six miles from all farms, corrals, sheds or other established headquarters where sheep are kept or are being herded; provided, that any person owning sheep affected with the scab or any infectious or contagious disease, who prior to the passage of this act established headquarters, shall be allowed to range such sheep upon the public domain within six miles in any direction of such established headquarters; provided, further, that such sheep shall not be allowed to range within three miles of any other headquarters, unless the other headquarters be less than six miles distant, in which case such sheep shall not be herded nearer to the other headquarters than a distance equal to one-half of the distance between the two headquarters. [C. L. 2345.]

3150. Not to be driven on highway. It shall be unlawful for any person or persons owning sheep affected with the scab or any infectious

or contagious disease to drive or permit the same to be driven upon any public highway, or within the distance of one mile of any such highway, or within six miles of any farm, corral, shed or other established headquarters where sheep are kept or being herded. [C. L. 2346.]

3151. Flocks may be examined. Any person owning sheep, or any one in his employ, shall have the right to examine any band of sheep that shall be driven within six miles of his headquarters, and any person or persons in charge of such sheep shall stop them and allow them to be examined, and shall render the necessary assistance in catching and examining them. If the person so in charge of such sheep refuse to render the assistance as above required, he shall be punished as hereinafter provided. [C. L. 2347.]

3152. Penalty for spreading. Any person who shall knowingly carry or drive or cause to be carried or driven one or more sheep affected with the scab or any infectious or contagious disease, into a herd of sheep belonging to another person, or shall knowingly carry or cause to be carried the parasite which causes such scab or disease, and place it where another person is corralling or herding sheep, so that such sheep may become affected thereby, shall be adjudged guilty of a felony, and upon conviction thereof shall be confined in the state prison not less than five years nor more than ten years, and be fined in any sum not less than one thousand dollars. [C. L. 2348.]

3153. Punishment for violation. Any person who shall be convicted of the violation of the provisions of this act shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than six hundred dollars. [C. L. 2349.]

3154. Liability for damages. Any person violating any of the provisions of this act shall be liable in damages to any person or persons

injured thereby, directly or indirectly, to be recovered in a civil action in any court of competent jurisdiction. [C. L. 2350.]

INSPECTION OF SHEEP.

3155. Sheep inspector appointed. [Ch. 91, '97.] § 1. In every county in this state containing two thousand sheep or more, the county commissioners shall appoint a sheep inspector, who shall be selected by the sheep owners of the county, at a meeting held for that purpose. Such inspector shall hold his office for the period of two years, and until his successor is selected and has qualified, unless sooner removed for cause. Any inspector may act in any other county of the state having no inspector on the request of the county commissioners thereof. The meeting mentioned in this section shall be called by the county commissioners, and they shall give notice of such meeting by notice published in a newspaper of the county for two successive weeks immediately prior to the date of such meeting, and such notice shall state the time and place of holding such meeting.

3156. Duty. [Ch. 91, '97.] § 2. It shall be the duty of the sheep inspector, whenever he shall have knowledge or information that any sheep within his jurisdiction have the scab or any infectious or contagious disease, to inspect said sheep; and should he find them so affected he shall forthwith notify the owner or person in charge of them of the fact, upon a proper printed form to be furnished by the county, and shall also file a copy of said notice in the office of the county auditor of his county; and said inspector shall at once place such infected sheep in quarantine, and shall also give to the owner or person in charge of them directions for treatment, and shall furthermore brand every sheep in the affected flock with the symbol Z. And the inspector shall instruct the owner or person in charge of the infected sheep to keep said sheep so branded until cured, and until discharged by written order of the inspector. The inspector shall also visit such infected flock once a month, for the purpose of seeing that they are being treated according to his direction, and shall file written reports of such visits with the county auditor, until such time as he finds said flock to be cured, when he shall give the owner or person in charge thereof a certificate of freedom from disease, and shall thereupon allow the owner or person in charge to obliterate the symbol so placed upon said sheep as above provided, and shall make a written report of the same to the county auditor. It shall also be the duty of the sheep inspector to inspect all sheep unloaded from the railroad cars and to compel the owner or person in charge thereof to thoroughly dip said sheep in some good sheep-dip before per-

mitting them to be taken out of the railroad company's yards, whether the sheep come from within this state or from without this state. It shall also be the duty of the sheep inspector, should he find sheep unloaded from the railroad cars to be affected with the scab or any infectious or contagious disease, to prohibit their removal from the yards under any circumstances. In the event of sheep developing scab after inspection and removal, the inspector shall proceed as provided in section two of this act. The inspector shall cause a printed notice of the law regarding the duties of parties shipping sheep over the railroad in this state, to be posted in a conspicuous place in every depot or unloading place in his district. The inspector may appoint deputies at the various unloading points in his district to superintend the unloading of sheep from the cars, and see to the sheep being held in the stock yards until the inspector arrives to inspect them.

3157. Inspection of imported sheep. [Ch. 91, '97.] § 3. Upon the arrival of any sheep at any unloading point in this state, the person in charge of them shall immediately report them to the inspector or his deputy, for inspection, and the inspector shall thereupon inspect and report as provided in section two of this act; and it shall be unlawful for any railroad company to release from their yards any sheep until so inspected; and in case any railroad company shall release from their yards the sheep before being inspected, and in case of failure from any cause of the person in charge of such sheep to report the same for inspection as above provided, or for any disobedience to the lawful instructions of the inspector after inspection, a fine of one hundred dollars shall be imposed upon said railroad company or said person, as the case may be, for each offense, in any court of competent jurisdiction, which fine when collected shall be paid into the county treasury for the use of the sheep inspector's fund, and any judgment for such fine against the person in charge of such sheep or against the owner thereof, shall be a lien upon said stock until paid.

3158. Governing control of infected sheep. [Ch. 91, '97.] § 4. The person in charge of said flock, when the same is reported by the inspector to be diseased, shall immediately herd or house the same, under the direction of the inspector, so that they cannot range upon any ground accustomed to be ranged upon by any other sheep, and shall restrain them from passing over or traveling upon any public highway or other road. The person in charge of such sheep shall at once follow any directions for treatment prescribed by the inspector, and promptly and faithfully carry out the same until a cure is effected, or until discharged by the inspector.

3159. Owner to assist. [Ch. 91, '97.] § 5. The owner or person in charge of any sheep about to be inspected shall afford the inspector

all reasonable facilities and assistance for making his inspection, and for every violation of the provision of this section the owner or person in charge of such sheep shall be fined in any sum not less than ten dollars nor more than one hundred dollars, and every separate day's neglect or refusal so to do shall constitute a separate offense; and the written report of an offense made by an inspector, under oath, shall be prima facie evidence of the commission of the offense, and any justice of the peace of the county where the offense is committed shall have jurisdiction thereof; and the inspector shall ex-officio report all violations of the provisions of this act, of which he has knowledge and shall prosecute the same.

3160. Bond and oath of office. [Ch. 91, '97.] § 6. Every inspector, before entering upon the duties of his office, shall take the oath of office prescribed by law, and shall give bond to the state of South Dakota in the penal sum of one thousand dollars, with sufficient sureties, conditioned that he will faithfully perform the duties of his office; said bond to be approved by the county auditor, who shall after approval indorse upon every bond he shall approve as follows: "I am acquainted with the sureties herein, and believe them to be worth the amount of the within bond, over and above their debts and liabilities."

3161. Bond recorded. [Ch. 91, '97.] § 7. Such bond, with the oath thereon, shall be recorded in the office of the register of deeds of the county in which the inspector shall reside, and may be sued on by any person injured on account of the unfaithful performance of said inspector's duty; provided, that no suit shall be so instituted after more than twelve months have elapsed from the time the cause of action accrued.

3162. Record. [Ch. 91, '97.] § 8. Every inspector shall keep a fair and correct record of all his official acts, and, if required, give a certified copy of any record upon payment of the fees therefor; and in case of the inspector's death, resignation, removal, or expiration of his term, said record shall be deposited with the county auditor, to be delivered to the successor of such inspector.

3163. Per diem. [Ch. 91, '97.] § 9. The inspector shall receive three dollars a day while necessarily employed in inspecting sheep, and his deputies shall receive the same pay and all fines and penalties shall be paid to the county treasurer to be set aside as an inspection fund.

3164. Service of notices. [Ch. 91, '97.] § 10. The notices herein provided for shall be served by the inspector, any of his deputies, or by the sheriff or any constable of the county, and the same fee shall be allowed therefor as is now allowed by law to sheriffs for like services.

3165. Forfeiture for false report. [Ch. 91, '97.] § 11. Whenever any sheep inspector shall wilfully and falsely report any sheep inspected to be affected with disease, or unlawfully and falsely report any sheep inspected by him to be free from disease, he shall forfeit his office as an inspector, and shall be subject to a penalty of not less than twenty-five dollars, nor more than one hundred dollars.

3166. Office declared vacant. [Ch. 91, '97.] § 12. If any sheep inspector shall be found guilty of any of the offenses set forth in section eleven of this act, or if on complaint in writing signed by any three sheep breeders of the county the county commissioners, after allowing the inspector a fair hearing, shall be of the opinion that he is incompetent to discharge intelligently and efficiently the duties of his office, or that, having sufficient knowledge or information, he has, for any cause, wilfully or negligently failed to make the required inspection or that he has needlessly made inspections for the purpose of obtaining fees, or that his reports have been influenced by favor or prejudice, or from any cause he has wilfully or negligently failed in the proper discharge of the duties of his office, it shall be the duty of the said county commissioners to declare said inspector's office vacant, and to immediately appoint a successor to such inspector.

3167. Sheep inspector's fund. [Ch. 91, '97.] § 13. In each county there shall be levied and assessed annually a tax of one-half of a mill upon the dollar of the assessed valuation of the sheep within the county, which shall be collected as other general taxes, and which with penalties herein provided, shall constitute a sheep inspector's fund of the county, and which fund shall only be expended in the payment of the legal services of the sheep inspector and his deputies, and for such other expenses as are provided for in this act, and said fees and expenses shall only be paid by the county treasurer, after they shall have been approved and allowed by the county commissioners in the same manner and form as claims against the county are approved and allowed by them; and from said fund the sheep inspector shall be paid not to exceed three dollars per day while actually employed in making the annual round which it is hereby made his duty to make between the tenth day of August and the tenth day of December in each year, besides three dollars per day for each day actually employed in making the inspections required by sections two and three of this act, and when he reports in substance no disease.

DEPUTY VETERINARY SURGEONS.

3169. Appoint deputies. [Ch. 183, '95; ch. 172, '93.] § 1. It is hereby made the duty of the state veterinary surgeon to select and appoint deputies in each county which has a public record of stock brands and where live stock is allowed by law to run at large on open ranges; provided, a petition is presented to said state veterinary surgeon signed by at least fifty (50) residents of said county and indorsed by the county commissioners.

3170. Bond or deputy. [Ch. 172, '93.] § 2. That said deputy shall be required by said state veterinary surgeon to give a bond in the sum of five hundred (500) dollars with two or more sureties who shall be residents of the said county, which said bond shall be conditional that said deputy shall faithfully perform the duties of said office as required by law.

3171. Salary of deputy. [Ch. 172, '93.] § 3. That in each county where there is a deputy state veterinary surgeon, said deputy shall receive for his services the sum of four (4) dollars per day for each day actually and necessarily spent in the discharge of his duty as such officer by law, to be paid out of the general fund of the county in which he is located.

3172. Veterinarian to inspect stock. [Ch. 172, '93.] § 4. That in addition to the duties now defined and provided by law for the state veterinary surgeon said veterinary surgeon is hereby required by himself or deputy whenever he has knowledge or information that shipment of stock is to be made or when notice is served in writing on said veterinary surgeon or his deputy residing in the county where the shipment of stock is to be made from the state of South Dakota, which said notice shall state the time and place of shipment or loading, to proceed to the place at the time given in said notice and make a careful examination of said stock offered for shipment, as to their health, kind of stock, age and sex of stock and all marks and brands as near as can be ascertained, and if any stock is in the said shipment bearing a different brand than that owned by said shipper said veterinary surgeon or his deputy shall hold said stock until the shipper produces a bill of sale

of the same or other satisfactory evidence of title or the possession of the same is satisfactorily explained by said shipper.

3173. Veterinarian to keep record — what to contain. [Ch. 172, '93.] § 5. It is hereby made the duty of the state veterinary surgeon or his deputy to make an accurate record of said stock in a book kept for that purpose, which record shall contain the number of stock, kind of stock, sex and age of stock, together with all marks and brands, name of owner or shipper, date and place of shipment, name and post-office address of consignee, and the condition of stock as to health, which record shall be open for inspection by the public at all times at the office of the state veterinary surgeon, or his deputy in the county wherein he is appointed, and said record so kept shall be prima facie evidence of the facts therein contained and for that purpose shall be admitted in evidence in any of the courts of this state.

3174. Certificate of examination, what to contain. [Ch. 172, '93.] § 6. That after said examination has been made, said state veterinary surgeon or his deputy shall if said stock is in a healthy condition and the party or parties shipping the same shall be the apparent owner or owners of such stock, issue a certificate to said shippers, which certificate shall contain the number and kind of stock, marks, brands and description, name of shipper, date of shipment, and that the same are free from any infectious disease, and that the same has been inspected as required by the laws of this state.

3175. Inspected stock not allowed to mix with other stock. [Ch. 172, '93.] § 7. That after said stock has been so inspected by said officers the said stock shall remain in the possession and charge of said officers until loaded and not be allowed to mix with other stock until loaded.

3176. Fees. [Ch. 183, '95; ch. 172, '93.] § 8. Every deputy so appointed shall collect for every inspection made from the owner or shipper for whom such inspection is made a fee not to exceed two (2) cents per head for horses or cattle and not to exceed fifty (50) cents per car load of any other stock, which fee he shall immediately pay over to the treasurer of the said county in which he is located and take his receipt for the same at the expiration of each week, and in case any owner or shipper shall refuse to pay the inspection fees, the state veterinary surgeon or his deputy shall take out of the stock inspected and retain in his possession one or more animals sufficient to cover inspection fees together with all accruing costs of taking, keeping, advertising and selling the same, and if not redeemed by the owner or shipper within five days after such taking, the stock to be sold under the same regula-

tions as required by law for impounded stock, the proceeds of the sale to be applied as stated above, and if any surplus money is left after all expenses are paid the surplus to be returned to the owner or shipper by the state veterinary surgeon or his deputy conducting the sale.

3177. Authority of deputy. [Ch. 172, '93.] § 9. Said deputy shall have the same authority in the county from which he is appointed as the state veterinary surgeon except when said state veterinary surgeon is in said county; then and in that case the said deputy shall work under the directions and instructions of the state veterinary surgeon, and the deputy may call the assistance of the state veterinary surgeon when he deems his assistance necessary.

3178. Report of deputy. [Ch. 172, '93.] § 10. It shall be the duty of every deputy to make a monthly report of the work done to the state veterinary surgeon and in case of resignation or vacancy brought about by other causes, shall turn all his books, papers and moneys belonging to the office over to the county treasurer of the county in which he was located where his successor in office upon presentation of proper credentials shall receive the same.

3179. Books and blanks, how supplied. [Ch. 172, '93.] § 11. It shall be the duty of the state veterinary surgeon to supply the deputies with the proper books and blanks as provided by the state examiner and give them proper credentials as such deputy.

3180. Publication of report. [Ch. 183, '95; ch. 172, '93.] § 12. It shall be the duty of the state veterinary surgeon to publish at the end of the shipping season a report on January first of every year the number of stock shipped out of the state and on August first the number of stock shipped in and give information for statistical purposes from his record.

SHIPMENT OF LIVE STOCK.

3181. Must have certificate of inspection. [Ch. 154, '93.] § 1. That no live stock shall be shipped or driven into the state of South Dakota, from any part of the infected districts, south or east of the quarantine line as established by the United States government or any quarantine line that may be established by the governor of the state, unless such stock is accompanied with a certificate from a United States stock inspector or a state veterinary surgeon, that said stock has been inspected by him and has complied with all the conditions of the United States quarantine laws and regulations, and that said stock is free from disease.

3182. Stock to be immediately removed to range. [Ch. 154, '93.] § 2. That all live stock shipped into the state of South Dakota for the purpose of ranging the same in said state, shall be removed from the unloading station in said state within forty-eight hours after unloading the same and driven immediately to their range unless the same is to be rebranded; in that case the owner or owners of said stock shall be granted six hours additional for every two hundred head or fraction thereof so to be branded.

3183. Stock shall be immediately driven to destination. [Ch. 154, '93.] § 3. That all live stock shipped through the state of South Dakota, and unloaded in said state intended for ranges outside of said state of South Dakota, shall comply with all the requirements of section two of this act, and said live stock intended for ranges outside of the state of South Dakota shall be unloaded at the nearest station to destination, and immediately driven by the most direct and practical route to their destination.

3184. State veterinary to inspect all stock for shipment. [Ch. 154, '93.] § 4. That all live stock shipped from the state of South Dakota shall, before being loaded for shipment or driven from said state, be inspected by the state veterinary surgeon of South Dakota or his deputy or other person provided by law for that purpose.

3185. Shippers to give notice to inspecting officers. [Ch. 154, '93.] § 5. That parties desiring to ship or drive live stock from the state of South Dakota shall give notice in writing to the officer whose duty it is to make such inspection, of the date, place and time of shipment and the approximate number of stock to be shipped. Such notice shall be given a reasonable time prior to the shipment to allow the officer sufficient time to get to the place described in each [such] notice.

3186. Duty of state veterinary surgeon. [Ch. 154, '93.] § 6. That the veterinary surgeon of the state of South Dakota, his deputy or other officer appointed for that purpose, shall at the time mentioned in said notice, proceed to the said place of shipment and make an inspection of said stock as to its health. He shall also make a record in a book kept for that purpose, of the number of stock, kind of stock, sex and age of stock, together with all marks and brands, name of owner or shipper, date and place of shipment and the name and address of consignee. If the stock is in healthy condition he shall issue his certificate to the owner or shipper of said stock, certifying that said stock is in healthy condition and that said stock has been inspected as required by this act, giving in said certificate also the number, brands or other marks or descriptions sufficient to identify said stock as recorded,

and which certificate and record shall be received in the courts of this state as prima facie evidence of the facts therein contained, and shall at all times be open to inspection by the public at the office of the person whose duty it is by law to keep said record in and for the county for which he is appointed.

3187. Dead stock must be buried. [Ch. 154, '93.] § 7. That all stock dying in transit or dying on the way from or to the shipping places in any organized county of this state, the owner or owners, carriers or person in charge at the time shall bury, within twenty-four hours after such deaths have taken place, the carcasses of such dead animals at least three feet below the surface of the ground.

3188. Penalty for violation of this act. [Ch. 154, '93.] § 8. That the violation of section one of this act shall be deemed a felony and be punishable with not less than one year, or more than five years in the state penitentiary. The stock so shipped or driven into this state in violation of the said section shall be returned at the owner or owners' expense when caught on the train or in or within five miles of the unloading station, and if driven in or out on the way to the range or on the range, shall be quarantined for ninety days or so much longer as deemed necessary by the state veterinary surgeon, at the expense of the owner or owners of the stock.

3189. Liability of owner. [Ch. 154, '93.] § 9. That on failure to comply with any of the provisions of this act the owner or owners of said stock shall forfeit to the county wherein such violation or failure to observe the provisions of this act takes place the sum of five hundred (500) dollars, and the stock owned by said party or parties shall be liable for said amount to be recovered in a civil action by said county; provided, that if the owner or owners of said stock are not residents of the state of South Dakota, that an attachment may issue as provided in the code of civil procedure, except that the county shall not be required to give a bond or undertaking, and it is hereby made the duty of the state's attorney of the various counties to enforce the provisions of this act within their respective counties.

3190. Act construed. [Ch. 172, '95; ch. 154, '93.] § 10. Provided, that nothing in this act contained shall be construed to require parties desiring to ship or drive live stock from the state to notify the state veterinary surgeon and his deputies, unless there is a deputy veterinary surgeon or other officer appointed for that purpose in and for the county from which such shipment is made or where the range of said live stock is located; provided, further, that nothing in this act

contained shall be construed to authorize the inspection of live stock shipped out of any county in this state in which live stock is not permitted to run at large the entire year.

3191. Inspector to be removed for cause. If any sheep inspector shall be found guilty of either of the offenses set forth in section twenty-three hundred and sixty-one, or if on complaint in writing by any three wool growers of the county the county commissioners, after allowing the inspector a fair hearing, shall be of opinion that he is incompetent to discharge intelligently and efficiently the duties of his office, or that having sufficient knowledge or information he has for any cause wilfully or negligently failed to make the required inspection, or that he has needlessly made inspections for the purpose of securing fees, or that his reports have been influenced by favor or prejudice, or from any cause he has failed in the proper discharge of the duties of his office, it shall be the duty of said commissioner to declare said inspector's office vacant and to make a new appointment. [C. L. 2362.]

3192. Owners' dip on own premises. Every owner of sheep having scab or other malignant contagious disease shall dip or otherwise treat the same upon his own premises; provided, that when he has more than one ranch or set of ranches, and the diseased sheep are not upon the ranch where his dipping works or other facilities for treating the disease are situated, he shall have the right to drive through intermediate ranges, but in so doing shall consult the owners or occupants of said range as to where he shall cross the same, and in no case shall he enter another corral or water at his troughs or accustomed watering place with his diseased sheep without the written or otherwise expressed consent of the owner; and for every violation of the provisions herein he shall be subject to a penalty of not exceeding one hundred dollars. [C. L. 2363.]

3193. Sheep inspector's fund. [Ch. 107, '91.] In each county there shall be levied and assessed annually a tax not exceeding in any one year one-half of a mill upon the dollar of the assessed valuation of the sheep within the county, which shall be collected as other general taxes, and which with the penalties herein provided, shall constitute a sheep inspector fund of the county, and which fund shall only be expended in the payment of the legal services of the sheep inspector, and said services shall only be paid by the county treasurer after they shall have been approved and allowed by the county commissioners in the same manner and form as claims against the county are approved and allowed by them; and from said fund the sheep inspector shall be paid not to exceed three dollars per day actually employed in making

the annual round, which it is hereby made his duty to do between the tenth of August and the tenth of December of each year, and three dollars per day for each day actually employed in making the inspection required by sections twenty-three hundred and fifty-two and twenty-three hundred and fifty-three, and when he reports in substance no disease. [C. L. 2364.]

EXPORTING CATTLE.

3193a. Unlawful shipment. [Ch. 58, '99.] § 1. It shall be unlawful for any person, persons, company or corporation to ship any neat cattle out of the state of South Dakota, or load any neat cattle on board any cars or boat for the purpose of shipping such cattle out of this state or drive any such cattle out of this state to the place of business of any transportation company for the purpose of shipment, unless such person, persons, company or corporation are the owners of such neat cattle, or have written authority from the owners or owner thereof to ship the same.

3193b. Evidence of guilt. [Ch. 58, '99.] § 2. Upon the trial of any person, persons, company or corporation charged with violating any of the provisions of this act, proof that any neat cattle shipped out of this state or loaded on board any cars or boat for shipment out of this state, or driven out of this state to the place of business of any transportation company for the purpose of shipment by such person, persons, company or corporation (had a different or other brand than the brand) of such person, persons, company or corporation, shall be prima facie evidence of guilt.

3193c. Penalty. [Ch. 58, '99.] § 3. Any person, persons, company or corporation who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than seventy-five dollars (\$75) nor more than one hundred dollars (\$100), for each offense, and each head of neat cattle shipped, loaded or driven in violation of the provisions of this act, shall be deemed a separate offense.

3193d. Jurisdiction. [Ch. 58, '99.] § 4. Any city, county or police justice of the peace shall have jurisdiction to try and determine and

impose a fine in any case arising under the provisions of this act, and may try and determine the same subject to appeal by the defendant or defendants, as in other cases.

CONTAGIOUS DISEASES AMONG SHEEP.

3194. Owner of sheep restricted, when. [Ch. 39, '95.] § 1. The owners, agents and persons in charge of any sheep, any of which are now or shall hereafter be affected with scab or infectious or contagious disease, shall keep the entire flock among which said diseased sheep may be, securely within some inclosure, or shall carefully herd them so that they cannot range upon any ground accustomed to be ranged upon by any other sheep and shall restrain them from straying over or traveling upon any public highway or other road.

3195. Owner to post notice. [Ch. 39, '95.] § 2. All owners, agents and persons in charge of such infected flock of sheep shall post, or cause to be posted, in conspicuous places on the boundaries of their range where said infected sheep may be, not less than four notices, signed with the name of the owner, agent or person in charge of said flock, printed or written in large type or letters, on white paper, which paper shall be at least twelve inches square, said notice to read as follows: "The sheep on this range are infected with a contagious disease," and such notice shall be kept so posted while said sheep are so diseased.

3196. Unlawful to move without permission of sheep inspector. [Ch. 39, '95.] § 3. It shall be unlawful for any person or persons owning, or having charge or control of any sheep affected with scab or any infectious or contagious disease, to move or permit the same or any of them to be moved from the range whereon they may be, while so diseased, except by written permission of the sheep inspector of the county in which said sheep are then located.

3197. May examine, when. [Ch. 39, '95.] § 4. Any person owning sheep, or any person in his employ, shall have the right to examine any band of sheep that shall be driven or shall pass within two (2) miles of his headquarters, and any person or persons in charge of such sheep shall stop them and allow them to be examined, and shall render the necessary assistance in catching and examining them. If the person so in charge of such sheep refuse to render the assistance as above required, he shall be punished as hereinafter provided.

3198. Penalty. [Ch. 39, '95.] § 5. Any person who shall knowingly carry or drive, or cause to be carried or driven, or shall negligently allow to stray one or more sheep affected with the scab or any infectious or contagious disease, into a flock of sheep or in contact with any sheep belonging to another person, or shall knowingly carry or cause or permit to be carried the parasite which causes such scab or other infectious or contagious disease, and places or allows to be placed such parasite where another person is corralling or herding sheep, so that such sheep may become affected thereby, shall be guilty of a felony, and upon conviction thereof shall be confined in the state's prison not more than five (5) years or shall be fined in any sum not more than five hundred (500) dollars.

3199. Unlawful to ship without permission of inspector. [Ch. 39, '95.] § 6. It shall be unlawful for any person or persons shipping sheep over any railroad, whether into this state or from one place to another in this state, to move or ship any sheep infected with the scab or any infectious or contagious disease, from the stock yards or other shipping place of the railroad company, or from any other shipping place, until permitted so to do by the sheep inspector of the county in which such sheep may then be, such permission to be in writing, and signed by said inspector.

3200. Fine lien upon sheep. [Ch. 39, '95.] § 7. Any person who shall be convicted of the violation of any of the provisions of this act, other than section five, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred (100) dollars nor more than six hundred (600) dollars, which fine shall be a first lien upon such flock of sheep until the same shall be fully paid.

3201. Damages, how recovered. [Ch. 39, '95.] § 8. Any person violating any of the provisions of this act shall be liable in damages to any person or persons injured thereby, directly or indirectly, to be recovered in a civil action in any court of competent jurisdiction.

STOCK GROWERS.

3202. Record to be kept. [Ch. 112, '91.] § 1. Any person now engaged, or who may hereafter engage in the business of a butcher in this state shall keep a record of all branded beef animals he may slaughter, giving age, sex, marks and brands, of whom purchased and date of said purchase, which record shall at all times be open for public inspection at his place of business.

3203. Hides to be exhibited when meat is offered for sale. [Ch. 112, '91.] § 2. It shall be unlawful for any person or persons who occasionally slaughter cattle for beef, to offer for sale said beef, without exhibiting the hide or hides of such beef at the time and place said beef is offered for sale. And it is provided further that the brand or brands on the hide so exhibited must not have been changed, mutilated or destroyed.

3204. Hides to be kept for ten days. [Ch. 112, '91.] § 3. All persons other than butchers who occasionally slaughter cattle for beef, either for home consumption or other purposes, shall keep the hide or hides of such branded animals so slaughtered for a period of not less than ten days, subject to inspection by any person or persons.

3205. Penalty. [Ch. 112, '91.] § 4. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine not exceeding five hundred (\$500) dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment in the discretion of the court.

ROUND-UP.

3206. General round-up, notice to be published. [Ch. 171, '93.] § 1. It shall be the duty of all owners of cattle or horses and all cattle and horse companies, as well as all stock associations in this state, before they begin the gathering or rounding up of stock, to give public notice in some legal weekly newspaper contiguous to the county they desire to work, of the date upon which they will begin such work, the hour of starting and the place from which they will commence work. Such advertisement shall be published once each week for at least four consecutive weeks prior to the date named for said gathering or round-up to start; provided, that the terms of this act are only applicable to the first or general round-up, in the spring of each year, or for the first round-up of the season in any given locality; provided, further, that the provisions of this act shall not require the publication of more than one notice for each association, consolidation or combination of persons who may join in the same round-up.

3207. Penalty for violating provisions of this act. [Ch. 171, '93.] § 2. Any person or persons, company or companies or stock associations in the state, violating the provisions of this act shall be guilty of a misdemeanor and on conviction thereof, before any court of competent jurisdiction, shall be punished by a fine of not less than twenty-five (25) dollars nor more than one hundred (100) dollars for each and every offense.

STOCK BREEDERS.

3208. Verified statement to be filed by owner of sire with the county clerk. [Ch. 125, '90.] § 1. That in order to protect farmers in this state against damage resulting from breeding to sires advertised with bogus or fraudulent pedigrees, and to secure to the owner of sires payment for services, the following provisions are enacted. That every owner of a sire, charging a service fee, in order to have a lien upon the get of any such sire under the provisions of this act for said service, shall file a statement, verified by oath or affirmation, to the best of his knowledge and belief, with the county clerk or auditor, giving the name, age, description and pedigree, as well as the terms and conditions upon which such sire is advertised for service.

3209. Certificate of county clerk, what to contain. [Ch. 125, '90.] § 2. The county clerk or auditor, upon receipt of the statement as specified in section one (1) of this act, duly verified by affidavit, shall issue a certificate to the owner of said sire, a copy of which certificate shall be filed with the clerk of the court in the county where said sire is stationed or located, and other copies furnished the applicant, which certificates shall be posted by the owner in conspicuous places, where said sire may be stationed for service, which certificate shall state the name, age, description, pedigree and ownership of said sire, the terms and conditions upon which the sire is advertised for service, and that the provisions of this act, so far as relates to the filing of the statement aforesaid, have been complied with.

3210. Lien — limitations. [Ch. 82, '91; ch. 125, '90.] § 3. The owner or owners of any sire receiving such certificate by complying with section one (1) of this act shall obtain and have a lien upon the get of any such sire for a period of eighteen months from the date of birth of get and said lien shall have priority over all other liens and incumbrances upon the get of any such sire, created subsequent to the passage and approval of this act; provided, said owner or owners shall within twelve months of the time of rendition of such service by said certified sire file for record a statement of account verified by affidavits or affirmation with the recorder of the county wherein the service has been rendered, of the amount due such owner or owners for said service, together with a description of the female served.

3211. Get shall not be exempt from levy and sale. [Ch. 125, '90:] § 4. No get of any such sire shall be exempt from levy and sale under

execution issued upon a judgment obtained in any court of competent jurisdiction for said service; provided, that the courts rendering such judgment shall find and certify in the record of the same that the plaintiff or plaintiffs have complied with the provisions of this act, and that the progeny sought to be levied upon is subject to the lien created; and provided further, that said finding, together with a description of dam of the progeny so liable to such lien, shall be indorsed upon the execution.

3212. Fees. [Ch. 125, '90.] § 5. For filing certificate, making copy of such affidavit or affirmation, [and] the certification of the date of such filing, the clerk or auditor shall be entitled to the same fees as are provided by law for like services in regard to chattel mortgages.

FENCE LAW.

3213. What counties. [Ch. 17, '85.] § 1. That in the counties of Fall River, Custer, Pennington, Lawrence, Butte, Harding, Burdick, Ewing, Bowman, and all of Billings, a fence constructed as hereinafter described shall be sufficient and lawful.

3214. Lawful fence defined. [Ch. 68, '91; ch. 17, '85.] § 2. Posts or other uprights of reasonable strength and firmness in position not more than thirty-two (32) feet distant from each other, with two (2) suitable stays between posts, nearly equally dividing such space into three parts, with three (3) strands of ordinary barbed fence wire, well stretched and firmly fastened to such posts, uprights and stays, with the upper strand not more than forty-eight (48) nor less than forty-two (42) inches above the general surface of the ground thereunder, and the lower strand shall not be more than eighteen (18) nor less than twelve (12) inches above the general surface of the ground thereunder, and the middle strand shall nearly equally divide the space between the upper and lower strands. And it shall be unlawful for any person or persons to maintain a fence consisting of one wire, or to permit any of the wire of a fence constructed under the provisions of this section to become loose; that any person or persons maintaining a fence consisting of one wire, or who shall permit any of the said wires to become loose, shall be liable in damage sustained by the owner of any live stock that may be injured thereby.

3215. Other fences lawful. [Ch. 17, '85.] § 3. Any other kind of a fence or barrier, as effective for the purposes of a fence as that

provided in section two of this act, is hereby declared sufficient and lawful; provided, that all corral fence exclusively for purposes of inclosing stacks is outside of any lawful inclosure shall not be less than sixteen feet distant from such stacks so inclosed, shall be substantially built with posts not more than eight feet distant from each other, and with not less than five strands of barbed fence wire, shall not be less than five feet high; and provided further, that any other kind of a fence equally as effectual for the purpose of a corral fence may be made in lieu thereof.

3216. Broken fence declared public nuisance. [Ch. 89, '93.] § 2. And in case any wire fence, wire or wires shall become loose, broken or in an unlawful condition, the same is hereby declared to become a public nuisance, and any person aggrieved thereby may complain to the county commissioner in whose district the same exists, whereupon the persons so aggrieved and said county commissioner and the road supervisor in whose road district the same is situated shall, if a nuisance is shown to exist, order the same to be abated, and the said road supervisor shall thereupon give notice in writing to the owner or owners (or to his or their agent) of the property on which said fence may be situated, notifying him or them of the dangerous condition of such fence, and the existence of said nuisance, and requiring him or them to repair or remove the same within ten (10) days from the date of said notice, or the same will be repaired or removed by the said road supervisor at the expense of said owner or owners, which notice shall be served personally, provided such owner or owners, or his or their agent or agents reside in the said road district, and if said owner or owners or his or their agent or agents reside without said road district, such notice shall be served by posting a copy of the same on the property on which said fence is situated, and at the nearest post-office to which said property is situated, and by mailing a copy of such notice by registered letter to the said owner or owners at their last known post-office address. In case the said owner or owners, or his or their agent or agents, shall fail or neglect to remove or repair such fence within ten (10) days after the service or posting and mailing of such notice then and in that event it shall be the duty of the said road supervisor to repair or remove the same as in his judgment seems proper.

3217. Fees of road supervisor, how paid. [Ch. 89, '93.] § 3. The said road supervisor shall receive as fees for the serving of such notice one (1) dollar for every person necessarily served and five (5) cents a mile for every mile necessarily traveled in making such service. An itemized statement of which fees and costs of repairing or removing such fence, duly verified before an officer qualified to administer oaths.

together with a copy of such notice, and an affidavit showing the time and manner of the service of the same, shall be filed with the county auditor of the county in which said property is situated, and shall by him be presented to the board of county commissioners of such county at their next regular session, which board shall audit and pay the same out of the general fund. The amount of such bill as allowed by said board may then be recovered in an action against the owner or owners of said property by said county, except in cases provided for in section five (5) of this act.

3218. Duty of county auditor. [Ch. 89, '93.] § 4. It shall be the duty of the county auditor on demand to furnish the owner or owners of such property at any time a copy of the bill of costs and services as filed by said road supervisor.

3219. Wire may be sold at public auction. [Ch. 89, '93.] § 5. In case it shall be necessary in the judgment of said road supervisor to remove such wire fence, wire or wires, he shall file a verified statement with the county auditor of the amount of wire taken from such premises, which statement shall be presented to said board of county commissioners, and the said wire may by them be ordered sold at public auction by the said road supervisor, after giving at least ten (10) days' notice of the time and place of such sale, together with the amount of such wire to be sold, which notice shall be made by posting the same on the property from which said wire was taken and in the post-office nearest said property. The proceeds thereof after deducting three (3) dollars for posting such notice and making such sale shall be by such road supervisor paid into the general fund of such county. And in the event that the amount so paid into the general fund exceeds the total costs, the balance shall be held subject to the order of the owner or owners of such property.

3220. Owner liable for damages. [Ch. 17, '85.] § 4. Any person owning or having in charge any horses, mules, asses, cattle, sheep, or goats, or any such animals, which shall breach through, over or under any lawful fence, not the property of the owner of such offending animals, shall be liable to the party having sustained injury by reason of such breaching, to be recovered in civil action before any court of competent jurisdiction, and it shall be sufficient in any such action, that it was a lawful fence where the breach was made, and the proceedings shall be the same as in other civil actions except as herein modified.

3221. Liability — no fence. [Ch. 17, '85.] § 5. Any person owning or having in charge in either of said counties, any swine which shall trespass upon the lands or premises of another, including prem-

ises in towns, villages and cities, whether such lands or premises are fenced or not fenced, such person owning or having in charge such trespassing swine shall be liable to any party sustaining such injury for all damages he may sustain by reason of such trespassing, to be recovered in a civil action before any court having jurisdiction thereof, and the proceedings shall be the same in all respects as in other civil actions, except as herein modified; provided, that if such trespassing swine shall be restrained, the person so restraining the same shall be entitled to one (1) dollar for each such swine so restrained, distinctly as a compensation for such restraining.

3222. Notice of claim for damages. [Ch. 17, '85.] § 6. The parties sustaining damages done by such trespassing animals as mentioned in sections four and five, before commencing action thereon, shall notify the owner or person having in charge such offending animals of such damages and the probable amount thereof, provided he knows to whom such offending animals belong, and that the owner or person in charge, reside and is within the county.

3223. Lien for damages. [Ch. 17, '85.] § 7. The party suffering damages done by offending animals as mentioned in sections four and five of this act, may retain and keep in custody such offending animals until the damages, other sums provided for herein, and costs are paid, or until sufficient security be given for the same, and when any animals are restrained as herein authorized, the person restraining the same shall without unnecessary delay notify the owner or person in whose custody the same was at the time the trespass was committed, of the seizure of such animals, provided such owner or person who had the same in charge is known to be the person making such seizure, and by him known to be, and reside, within the county.

3224. Fee for serving notice. [Ch. 17, '85.] § 8. For serving notice as provided in sections six and seven of this act, the person making such service shall be entitled to the same fees and mileage allowed a sheriff in serving a summons.

3225. Trial. [Ch. 17, '85.] § 9. Upon the trial of an action under the provisions of this act the plaintiff shall prove the amount of damages sustained and the amount of expenses incurred, for restraining and keeping the offending animals, if such have by him been restrained, and any judgment rendered for damages, other sums provided for, costs and expenses against the defendant, shall be a lien upon the animals having committed the damages, and they may be sold and the proceeds applied to the satisfaction of the judgment.

3226. Defenses. [Ch. 17, '85.] § 10. If upon trial it shall appear that the defendant is not the owner or person in charge of such offending animals he shall be discharged and the suit may proceed against the defendant whose name is unknown, and if at the commencement of the action the plaintiff does not know the name of the owner or keeper of such offending animals, he may bring a suit against a defendant unknown. In such case service shall be made by publishing a copy of the summons with a notice stating the nature of the action in a newspaper, if there be one published in the county, and if not, by posting copies of the summons and notice in three public places in the county in either case not less than ten days previous to the day of trial.

3227. Animals sold. [Ch. 17, '85.] § 11. After judgment shall have been rendered against the defendant unknown as aforesaid, the offending animals, or so many of them as may be necessary, shall be sold as in other civil actions and after said judgment and costs have been satisfied, if there is a surplus of money, it shall be placed in the hands of the county treasurer, and if the defendant does not appear and call for the same within six months from the day of sale, it shall be placed into the school fund, for the use of the public schools of the county.

3228. Forcible retaking animals. [Ch. 17, '85.] § 12. Taking or attempting to take, or advising or assisting in the taking from the possession of any person having them in charge, without the consent of such person, except by due course of law, any animals restrained and held by virtue of section seven of this act, is hereby declared a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed fifty dollars or by imprisonment in the county jail not to exceed thirty days, or by both such fine and imprisonment at the discretion of the court.

3229. Jury trial. [Ch. 17, '85.] § 13. In all actions under and by virtue of the provisions of this act, wherein the amount of damages claimed does not exceed twenty-five (25) dollars, the judgment of the court having original jurisdiction thereof shall be final, provided either party to such suit shall be entitled, upon demand therefor, to a jury trial.

3230. Exemptions. [Ch. 17, '85.] § 14. No property shall be exempt from seizure and sale under execution upon judgment obtained under and by virtue of the provisions of this act, except those exemptions made absolute.

3231. Limitations. [Ch. 17, '85.] § 15. All actions under the provisions of this act, unless commenced within six months from the date of alleged damages, are hereby declared barred by statute of limitations.

3232. Repeal. [Ch. 17, '85.] § 16. Chapter seventy-eight of the laws of eighteen hundred and eighty-one, and amendments thereto, and all acts and parts of acts containing the provisions of this act, so far as their application to the counties herein named, are hereby repealed.

3233. Special laws made general. [Ch. 67, '91.] § 1. That the provisions of chapter seventeen (17) of the special laws of the sixteenth (16th) legislative assembly of the state of South Dakota, approved March twelfth, eighteen hundred and eighty-five, being an act entitled an act to establish a fence law in the counties of Fall River, Custer, Pennington, Lawrence, Butte, Harding, Burdick, Ewing, Bowman and all [of] Billings, be and the same is hereby enacted and adopted and made general as to all unorganized counties and to counties that may hereafter be organized and in counties that have been organized subsequent to March twelfth, eighteen hundred and eighty-five, in the state of South Dakota until such time as a majority of the qualified electors of such counties or any of them shall at a general election otherwise decide.

ARTICLE 7. GAME.

PROTECTION OF BIRDS.

3234. Shooting or killing restricted — penalty. [Ch. 90, '99.] § 1.

(1) Every person who shoots or kills any prairie chicken, pinnated grouse, sharp tailed grouse, ruffed grouse, woodcock or quail, between the first day of January and the first day of September following, or any song bird or insect eating bird at any time, excepting crows, black-birds and sparrows; or

(2) Shoots or kills any wild duck, wild goose, brant or wild crane between the first day of May and the first day of September following, or shoots or kills any plover or curlew between the fifteenth day of May and the first day of September following; or

(3) At any time kills or shoots any wild duck, goose or brant with any swivel gun or other gun, except such as is commonly shot from the shoulder, or in hunting such birds makes use of any artificial light or battery; or

(4) Uses or employs any trap, snare, net or bird line, or medicated, drugged or poisoned grain or food to capture or kill any of the birds mentioned in sub-divisions 1, 2 or 3 of this section; or

(5) Wantonly destroys any nest of eggs or any of the birds mentioned in sub-divisions 1, 2 or 3 of this section; or

(6) Shoots, kills, traps or takes any beaver or otter at any time prior to the fifteenth day of January A. D. 1911, or thereafter between the fifteenth day of December and the fifteenth day of October following; or

(7) Knowingly hunts in any way, upon the enclosed, occupied or cultivated lands of another without the consent of the owner or tenant; or

(8) Shoots or kills in one day more than twenty-five of the game birds mentioned in sub-divisions 1, 2 or 3 of this section, is guilty of a misdemeanor, and upon conviction thereof before a justice of the peace of the county, is punishable by a fine of not more than ten dollars (10) for each of the birds mentioned in sub-divisions 1, 2 or 3 of this section, so shot or killed or nests or eggs so destroyed, and for each violation of sub-divisions 4 or 5 of this section; and not more than one hundred dollars (\$100) for each animal mentioned in sub-division 6 of this section, so shot, or killed, trapped or taken, and not more than one hundred dollars and not less than twenty-five dollars, for a violation of sub-divisions 7 or 8 of this section, in the discretion of the court.

3235. Having same in possession. [Ch. 90, '99.] § 2. Every person who has in his possession any of the birds or animals mentioned in the last section, after fifteen days from the close of the respective seasons during which it shall be lawful to hunt or kill the same, shall be guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of the county, is punishable in the manner and to the extent provided in the last section for the killing of the same.

3236. Shipping or selling out of the state. [Ch. 90, '99.] § 3. It shall be unlawful for any person, railroad company, express company, or other common carrier, or the servants or agents of such common carrier, at any time to send, ship, carry or transport out of this state, or to have in his or their possession for that purpose any game mentioned in this act, and the possession of such game by any person, railroad company, express company or other common carrier shall be deemed presumptive evidence of the violation of the laws of this state enacted for the protection of game; provided, nothing in this act shall be construed to abridge or repeal any existing

laws of this state prohibiting the sale of game within this state. Provided, nothing in this section shall prevent any person from taking game during the open season, and three days thereafter, out of the state when shipped in open view, tagged and plainly labelled with the name of the owner thereof and accompanied by him, to be used for food only, and not for commercial purposes, and in no instance shall any person be permitted to take out of the state, at any one time, a greater number than twenty-five birds. Any person, corporation or company violating any of the provisions of this section, shall be punished by a fine of not less than ten dollars, nor more than fifty dollars for each offense.

3237. Attempt to violate. [Ch. 90, '99.] § 4. Any attempt to violate any provision of any section of this act shall be deemed a violation of such provision.

3237a. Presumption of guilt. [Ch. 90, '99.] § 5. Any person or persons traveling in any manner in any part of this state outside of the immediate bounds of the inhabited parts of any village, town or city in possession of any kind of a shot gun and ammunition with dog or dogs ordinarily used or kept for the use of hunting any game mentioned in this act from the first day of July, and to the first day of September each year shall be presumed to have violated or attempted to violate the provisions of this act as to unlawful shooting or taking of game mentioned in this act, the taking or shooting of which is prohibited during said time and proof of the possession of such property during said time and in such place shall be prima facie evidence of the guilt of such person or persons to so violate or attempt to violate the provisions of this act as to shooting, killing or taking such game: That the use of traps, snares and all other devices used to snare, trap or take game birds, as defined in this act is hereby prohibited and subjects the person or persons using the same to all the penalties prescribed in this act for shooting, trapping and ensnaring or taking game birds, and the fact that any traps, snares or other devices used for the purpose of trapping, snaring or taking game birds, are found in the possession of, or upon the premises of any person or persons, shall be prima facie evidence of the guilt, violation or attempted violation by such person or persons of the provisions of this act.

3238. Forfeiture and confiscation of hunters' outfits. [Ch. 90, '99.]

§ 6. Any person offending against any of the provisions of any section of this act shall be punished not only by the fine herein prescribed, but also by a forfeiture of any gun or guns, dog or dogs, trap or other sporting implement in his or their possession while so offending, and any court having jurisdiction may, upon due proof, adjudge the same forfeited, and order such traps to be destroyed, and may order any dog or dogs, gun or guns so used to be sold at either public or private sale, and the proceeds of such sale shall be paid to the county, to be placed in the county game fund. Any person convicted of the violation of any of the provisions of this section shall be fined not less than ten dollars nor more than fifty dollars, or by imprisonment in the county jail for not less than ten days nor more than thirty days, or by both fine and imprisonment in the discretion of the court.

3239. Unlawful to serve to guests in public houses. [Ch. 90, '99.]

§ 7. No keeper of a hotel, restaurant or boarding house shall serve to any of his guests any game, the taking or killing of which is prohibited by law, during any of the said periods when the taking or killing of the same is prohibited by the laws of this state.

3240. Wardens — how appointed and qualify. [Ch. 90, '99.] § 8.

The fish wardens who are now appointed, or who may hereafter be appointed, shall be game wardens. Each game warden, sheriff, constable, or other officer of the law, is charged with the duty of enforcing the provisions of this act. He shall arrest, or cause to be arrested, all violators thereof, and shall prosecute all offenses against the same. He shall have the power to arrest without a warrant any person or persons found violating any of the provisions of this law, when detected in the commission of the act. And he may seize and take into his custody all the birds, or any part thereof, shot, killed or taken during the period when the shooting, killing or taking is not permitted by this act. Each warden, before entering upon the duties of his office, shall take an oath to support the constitution and faithfully and impartially discharge the duties of his office, which oath and appointment shall be filed with the secretary of state.

3241. Appointment of deputies. [Ch. 90, '99.] § 9. Each warden may appoint not more than ten deputies, residents in his county. Such

appointment must be made in writing, and shall be revokable in writing at the pleasure of the principal. Each deputy so appointed shall take and subscribe on the back of his appointment his oath of office. Such appointments or revocations with the oath of office shall be filed with the auditor of the county for which he is appointed. Such appointments may be in substantially the following form.

STATE OF SOUTH DAKOTA, }
 County of... .. }

The undersigned hereby constitutes and appoints, a resident of said county, a deputy game warden within and for said county, to hold his said office for the period ending on the first day of March,, unless before that date revoked.

Dated, this day of

 Warden.

3242. Jurisdiction of warden. [Ch. 90, '99.] § 10. Each warden shall have jurisdiction throughout the state to make complaint against, arrest and prosecute, all violators of the laws for the protection of game, and each deputy shall have like jurisdiction throughout his county.

3243. Duties of warden. [Ch. 90, '99.] § 11. It is hereby made the duty of each warden and deputy warden, within his county, to see to the enforcement of the provisions of the laws for the protection of game, and to make complaint and to prosecute all violators of the provisions of said laws, which shall come to his knowledge, or of which he shall be credibly informed; and such wardens and their deputies, within their respective counties, are authorized to arrest without warrant any person found violating the provisions of said game laws when detected in the act, or found with the game in their possession at the time of their arrest, and to take the party offending before any court having jurisdiction to try the offender, or to give immediate notice thereof to the state's attorney of the county in which the arrest was made, who shall forthwith make complaint or information against such offender, and prosecute the same. The fees therefor shall be the same as now provided by law for like service in criminal actions.

3243a. Warden entitled to one-half of fine recovered. [Ch. 90, '99.] § 12. In all prosecutions instituted in the manner set forth in this act the warden, deputy warden, or other officer instituting such prosecution shall be entitled to one-half of the penalty or fine when recovered,

and the remainder of such penalty or fine shall go to the county game fund.

3243b. Informer entitled to one-half of fine recovered. [Ch. 90, '99.]

§ 13. Any person making complaint and furnishing evidence which shall lead to the prosecution and conviction of any offender under the provisions of the game laws, shall be entitled to one-half the fine or penalty, when recovered in such prosecution, and the other half to go to the county game fund.

3243c. Providing for hunters' license. [Ch. 90, '99.] § 14. It shall

be unlawful for any person not a bona fide resident and citizen of this state to pursue, hunt or kill within this state, any game bird or animal intended to be protected by the laws of this state, at any time, without first procuring a hunter's license therefor from the county treasurer. Any person applying for hunter's license shall state in writing over his own signature, his name and place of residence, and shall pay to the county treasurer therefor the sum of ten dollars before such license shall issue. Such license shall not be transferable, and shall be substantially in the following form:

HUNTER'S LICENSE.

STATE OF SOUTH DAKOTA, }
County of..... }

This is to certify that ... of in the state of having this day made application for a hunter's license, and having paid therefor the sum of ten dollars, as required by law is hereby permitted to shoot and kill, within this state during the year A. D. any of the birds and animals intended to be protected by the game laws of this state, during the time in said year when the shooting and killing of such birds and animals is not prohibited by law.

In witness whereof I have hereunto subscribed my name, and caused the seal of the county clerk to be affixed hereto, this day of, A. D.
.....
County Treasurer.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten nor more than fifty dollars.

3243d. Providing for game fund and payments to prosecute. [Ch. 90, '99.] § 15. All costs that shall be collected and all fines and penalties or shares thereof which shall be recovered and paid into the county treasury, and all moneys received for hunter's license, and the proceeds of any and all game, dogs and guns sold, shall be kept as a

separate fund to be called a game fund, to be expended by the board of county commissioners toward the payment of expenses of the game warden which shall be incurred in the enforcement of the provisions of the game laws of this state.

3243e. Party testifying, testimony cannot be used against him. [Ch. 90, '99.] § 16. In any prosecution or judicial proceeding under the provisions of any of the game laws of this state any person participating in or in any way accessory to any violation thereof, may testify as a witness against any other person violating the same, without criminating himself by so doing, and nothing in the testimony which he shall so give, or in any admissions he shall make in relation thereto as such witness shall at any time be used against him in any criminal proceedings against him for such violation.

3243f. Providing for search. [Ch. 90, '99.] § 17. Any court having jurisdiction of any of the offenses under this act, upon receiving proof by affidavit of probable cause for believing in the concealment of any game, the killing or taking of which is prohibited in this act, shall issue a search warrant and cause search to be made in any place therefor, and to that end the officer serving such warrant may cause any building, enclosure, or car named therein to be entered, and any apartment, chest, box, locker, crate, basket or package to be broken open and the contents thereof examined.

3243g. Joining offenses in one count. [Ch. 90, '99.] § 18. In prosecutions under the game statutes of this state it shall be permissible in any indictment, information or complaint of them which are named in any section of such statutes, when not repugnant in their nature or penalty, and such count or statement shall be sustained by proof of any one of the offenders charged.

3243h. Property in game and articles confiscated. [Ch. 90, '99.] § 19. No person shall at any time acquire or have any property in any game which has been taken, captured or killed, or had in possession contrary to law, but the same shall be the property of the state, to be disposed of for the benefit of the fund to enforce the game laws, and any warden or his deputy may seize the same when found, and sell the same, together with any dogs or guns forfeited, and pay the proceeds of the sale to the county treasurer, to be placed in the game fund, and the

possession of the officer so seizing the same, and that of any one who shall thereafter purchase the same, shall be deemed lawful.

3243i. Definition and meaning of terms. [Ch. 90, '99.] § 20. The word "person" as used in this act, shall include the plural as well, and also all individuals, firms, joint stock companies, and all combinations thereof, and the masculine gender shall include the feminine as well, and the word "possession" shall include both actual and constructive possession.

3243j. Resisting officers misdemeanor. [Ch. 90, '99.] § 21. Whoever shall resist or obstruct any officer by force, threat, or otherwise in the discharge of his duties under this act shall be guilty of a misdemeanor and be punished by a fine of not less than ten dollars, nor more than fifty dollars for such offense.

3243k. Limitation one year. [Ch. 90, '99.] § 22. All prosecutions under this act shall be commenced within one year from the time the offense was committed.

3243l. Jurisdiction in justice court, how prosecuted. [Ch. 90, '99.] § 23. All justices of the peace and police justices within their jurisdiction shall have concurrent jurisdiction with the circuit court to try and determine all offenses arising under the provisions of this act and of all the laws of this state for the protection of game. All prosecutions shall be in the name of the state and shall be instituted and prosecuted in accordance with the provisions of the law for criminal procedure in the courts where the prosecution is had. In all convictions the costs of the prosecution shall be taxed against the defendants as in other criminal cases and the court shall order as a part of the judgment that the defendant shall stand committed to jail until the fine and costs shall be paid. Provided, the term of imprisonment shall not exceed thirty days in any one case.

BEAVER.

3244. Unlawful to kill, when. [Ch. 94, '95.] § 1. It shall be unlawful to kill, entrap, ensnare, capture or destroy any animals of the beaver family within the state of South Dakota, during a period of ten years from and after the passage and approval of this act.

3245. Penalty for violation of this act. [Ch. 94, '95.] § 2. Any person who shall violate any of the provisions of this act, or shall buy, sell, or have in his possession the carcass or hide of any animal of the beaver family, knowing the same to have been killed, entrapped, ensnared or captured contrary to the provisions of this act, shall, upon conviction thereof, be subject to pay a fine of not less than twenty-five dollars, nor more than one hundred dollars, and imprisonment in the county jail for not more than twenty days for the first offense; for all subsequent offenses thereof shall pay a fine of not less than one hundred dollars and not more than five hundred dollars, and imprisonment not to exceed more than six months in the county jail.

LARGE GAME.

3246. Non-resident. [Ch. 66, '97.] § 1. It shall be unlawful for any person not a bona fide resident and citizen of the state of South Dakota to pursue, hunt, kill or capture in any way or manner or by any means or device, within the boundaries of said state, any buffalo, moose, elk, deer, antelope, mountain sheep or mountain goat.

3247. Close years. [Ch. 66, '97.] § 2. It shall be unlawful for any person or persons whomsoever to pursue, hunt, kill or capture within the boundaries of this state, any of the animals in section one (1) of this act mentioned, in and during the year A. D. nineteen hundred and every fifth year thereafter, which years are to be declared to be close years.

3248. Age of animal. [Ch. 66, '97.] § 3. It shall be unlawful for any person or persons to hunt, pursue, kill or capture any of the animals in section one (1) mentioned under the age of one year.

3249. Of female, when unlawful. [Ch. 66, '97.] § 4. It shall be unlawful for any person or persons to hunt, pursue, kill or capture any female of the animals in section one (1) mentioned, prior to the first day of October A. D. nineteen hundred and one.

3250. What months lawful. [Ch. 66, '97.] § 5. It shall be unlawful for any person or persons to hunt, pursue, kill or capture any of the adult males of the animals in said section one mentioned, or any of the adult females after October first, A. D. nineteen hundred and one, except during the months of October and November in years not close years, which months in years not close years are declared an open season, and in such open season, only under limitations and restrictions as follows, to wit: No person or persons hunting together shall kill or capture more than two of said animals in any one day, nor more than four in any one open season, nor more than one of the females of such

animals in any open season in which such females may be taken, nor have in his or their possession at any one time, the carcasses or parts of the carcasses of more than three of such animals, nor shall anyone use any dogs in running or coursing such animals.

3251. Unlawful possession. [Ch. 66, '97.] § 6. It shall be unlawful for any person or persons hunting together to have in possession, for sale, or to offer for sale, or to sell the carcasses or part of the carcasses of more than two of said animals in section one of this act mentioned, taken by himself or themselves in this state, in any one year, and every such hunter selling the carcass of any such animal, shall give to the purchaser a certificate in writing stating when, where and by whom such animal was taken, its sex and weight, which certificate shall be preserved until the end of the year in which it was given and which shall be exhibited on demand to any game warden of the state. No other person than the actual captors shall sell any carcass or parts of a carcass of any of said animals taken in this state, except shopkeepers as in the next section of this act provided.

3252. Shopkeepers prohibited from selling. [Ch. 66, '97.] § 7. No shopkeeper shall sell or offer for sale the carcasses or part of carcasses of the animals in section one (1) mentioned sold to him contrary to the provisions of the last preceding section. Nor shall he have in possession for sale the carcasses of more than four of such animals at any one time, taken in this state, nor shall he sell or offer to sell the same at any other place than an open shop, where such animals shall be kept on open view, which shop shall have been kept as an open shop for the sale of meat for at least three months prior thereto, nor shall any such shopkeeper sell more than ten such carcasses in any one year, and he shall keep in said shop exposed to public view, a certificate in writing showing when, where and by whom each respective animal offered for sale was taken, with its weight and sex, which certificate shall be preserved until the end of the year in which it was made, and no such shopkeeper shall have in his possession any such carcass or parts of such carcass after the twentieth day of December in any year, nor shall he purchase any such after the fifth day of December in any year. Any person violating any of the foregoing provisions of this act shall, upon conviction, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for the first offense, and for each subsequent offense by a fine not less than fifty dollars nor more than one hundred dollars and by imprisonment in the county jail for a period not less than thirty days nor more than three months.

3253. Hotel prohibited from serving. [Ch. 66, '97.] § 8. No keeper of a hotel, restaurant or boarding house shall serve to his guests any game in this act mentioned during any of the period of time

when the taking or killing of the same is prohibited under a penalty for each offense of a fine of ten dollars.

3254. Unlawful to ship. [Ch. 66, '97.] § 9. It shall be unlawful for any person, railroad company, express company or other common carrier, or the servants or agents of such common carrier at any time to send, ship, carry or transport out of this state, or to have in his or their possession for that purpose any animal, either dead or alive, in this act mentioned; provided, that nothing in this act shall prevent the transporting out of this state the mounted heads, stuffed skins, hides and horns of animals not killed in violation of this act; provided further, that none of the provisions of this section shall apply to game or freight in transit into or through this state from other states or territories. Any person or corporation violating any of the provisions of this section shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars for each consignment from one consignor to one consignee.

3255. Game wardens. [Ch. 66, '97.] § 10. The fish commissioners who are now appointed or who may hereafter be appointed shall be game wardens. Every game warden, sheriff, constable and other officer of the law are charged with the duty of enforcing the provisions of this act. They shall arrest or cause to be arrested all violators thereof and shall prosecute all offenses against the same. They shall have power to arrest without warrant any person or persons found violating any of the provisions of the law when detected in the commission of the act, and they may seize and take into custody the carcass or any part thereof of any animal killed during the period when the killing or capture of such animal is not permitted by this act.

3256. Prosecutions. [Ch. 66, '97.] § 11. Prosecutions for the violation of any of the provisions of this act shall be commenced before any justice of the peace in the county wherein the offense shall have been committed and any such justice of the peace shall, upon his own knowledge or upon the oath of any competent person, issue his warrant to the sheriff or any constable of his county for the arrest of any person or persons charged with the violation of any of the provisions of this act and upon the arrest of such person or persons shall proceed in the hearing of said complaint as in other cases of misdemeanor cognizable before justices of the peace.

3257. Fines disposed of. [Ch. 66, '97.] § 12. Fines collected under this act shall be paid under the direction of the court imposing the same, one-half to the informer or informers and the other half into the school fund of the county in which such fines shall have been collected. (This chapter probably repealed by next chapter.)

CLOSE SEASON.

3257a. Close season. [Ch. 91, '99.] § 1. It shall be unlawful for any person or persons to pursue, hunt or kill by any means or device whatever, any buffalo, elk, deer, antelope or mountain sheep between the first day of January and the fifteenth day of October in each year, within the boundaries of the state of South Dakota.

3257b. Unlawful to sell. [Ch. 91, '99.] § 2. It shall be unlawful for any person or persons to sell or offer for sale within the state of South Dakota, at any time, any carcasses or parts of carcasses of any of the animals named in section 1 of this act.

3257c. Unlawful to transport. [Ch. 91, '99.] § 3. It shall be unlawful for any railway company, express company, or other common carrier, or the servants or agents of such common carrier, at any time to send, ship, carry or transport out of this state any carcass of carcasses of any such animals as named in section 1 of this act.

3257d. Penalty. [Ch. 91, '99.] § 4. Any person or persons who shall violate any part of any of the three preceding sections shall, upon conviction thereof, be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200), or be imprisoned in the county jail not less than thirty (30) days nor more than six (6) months, or both such fine and imprisonment at the discretion of the court.

3257e. Powers and duties of fish commissioners. [Ch. 91, '99.] § 5. The fish commissioners who are now, or who may hereafter be appointed, shall be game wardens. Every game warden, sheriff, constable, or other officer of the law, is charged with the duties of enforcing the provisions of this act. They shall have power to arrest without warrant any person or persons who may be found violating any of the provisions of this act, and they may seize and take into custody any carcasses or parts of carcasses of any of the animals named in this act during such time when the killing of such animals is prohibited by this act.

3257f. Prosecution — jurisdiction — fines. [Ch. 91, '99.] § 6. All prosecutions for the violation of any of the provisions of this act shall be commenced before any justice of the peace in the county wherein such offense shall have been committed, and all fines collected under this act shall be paid under the direction of the court imposing the same, one-half to the informer, and the other half into the game fund of the county in which such fine shall have been collected.

PROTECTION OF FISH.

3258. Unlawful to take fish. [Ch. 88, '99; ch. 90, '97.] § 1. It shall be unlawful for any person to kill or take, in any of the permanent waters of this state, for any purpose, any trout, or food fish, at any time, by the use of any poisonous or deleterious or stupefying drug, or by the use of any explosive substance, or by the erection of any weir, dam or other artificial obstruction, or by the use of any net, seine, trap, set line, spear or device whatever except by hook and line; and it shall be unlawful for any person to use or have under his control or supervision, directly or indirectly, in the waters of any stream or lake, more than two hooks at the same time, provided that it shall be lawful to take or kill with a spear, at any time, any suckers or buffalo fish. And it shall be unlawful for any person to empty, or allow to be emptied, place or allow to be placed, any saw dust or manure or refuse matter of any kind, into the waters of this state containing food fish, or to deposit the same within such distance that it may be carried into such waters by natural causes; or to place, keep or maintain in any of the streams of this state any net, seine, set line or trap of any kind. Provided, however, that it shall be lawful for any person to take fish of any kind, at any time, by seine, wier or trap for the purpose of cultivation and propagation, providing that, and before proceeding to take fish for such purpose, said party or parties shall first procure a written permission from two county commissioners of the county where said fish are so to be taken, attested by the county auditor of said county, which permission shall be in force and effect for the period of ten days from the date of attesting same. And the said person, or persons, obtaining the same shall notify the fish warden, or the sheriff if there be no fish warden, of said county, in writing of the time and place where the privileges of said permit will be exercised, and it shall be the duty of said fish warden or sheriff or deputy or any person he may select, to attend at such time and place and superintend the taking of fish under said permit, and he shall receive for his services the sum of \$3.00 per day, to be paid in advance by the person procuring said permit before any fish is taken, or attempted to be taken under said permit; and it shall be the duty of said fish warden or sheriff, or deputy, or person appointed to cause all fish weighing more

than one-half pound to be immediately placed back in the water from which they are taken, and liberated therein.

3259. Unlawful to capture from private pond or lake without consent of owner. [Ch. 90, '95.] § 2. It shall be unlawful for any person or persons to kill or take any trout or other food fish, in any manner whatsoever, from any private lake, pond, canal or stream used for the propagation of such fish, except by the consent of the proprietor of such lake, pond or stream.

3260. Fishways to be maintained in dams and artificial obstructions. [Ch. 90, '95.] § 3. Any person or persons, or the officers and servants of any company or corporation, maintaining or keeping up any dam, weir, or other artificial obstruction in or upon any stream of water in this state shall erect, keep up and maintain at such dam, weir or other artificial obstruction, a sufficient sluice or fishway for the free passage of fish up and down such stream; provided, that any person, persons or corporation who shall so keep and maintain any dam, weir or other artificial obstruction without so providing sluice or fishway, or shall refuse or neglect after a period of thirty days to so provide said sluice or fishway, after being served by a notice in writing signed by the state's attorney of said county or either of the counties should such stream border upon more than one county, that thereupon it shall be the duty of the county commissioners of said county or either of the same to forthwith cause said sluice or fishway to be placed in said dam, weir or obstruction and the expense of placing and maintaining the same shall be entered by the county auditor on his books, the same as a tax upon the personal property would be entered of the said party, parties or corporations and shall be collectible the same as a personal tax is collected by the laws of this state.

3261. Unlawful to capture, sell or transport fish except at certain times. [Ch. 90, '95.] § 4. That it shall be unlawful to kill, take or have in possession any trout, bass, carp, shad or croppies taken or killed in any of the waters of this state during the months of October, November, December, January, February, March and April or either of said months in any year, and the possession of said bass, trout, carp, shad or croppies, by any person during the above-mentioned months shall be prima facie evidence of the violation of the provisions of this section, and the burden shall be upon the defendant to establish that

such fish so in his possession were taken without the state. It shall be unlawful to sell or offer for sale at any time, any trout or other food fish, taken or killed in any of the waters of this state, or to ship or transport them out of the state. It shall be unlawful for any express company or other carrier to receive, ship or transport any trout or other food fish taken or killed in any of the public waters of this state. It shall be unlawful to kill or destroy, or have in possession for any purpose whatsoever, except for cultivation, propagation or dissemination, at any time, any trout, silver, striped or black bass, pickerel or pike less than six inches in length.

3262. Governor to appoint fish wardens. [Ch. 90, '95.] § 5. It shall be the duty of the governor of this state on or before the first day of March in each and every year, then and after the passage of this act to appoint one person in each of the organized counties of this state as a fish warden, who shall hold office for the period of one year, or until his successor is appointed and qualified. That the fish warden so appointed shall appoint not to exceed ten persons who are residents of his county, as his deputies, each of said deputies having the same power and authority as vested by this chapter in said fish warden.

3263. Duty and authority of fish warden. [Ch. 88, '99; ch. 90, '95.] § 6. It is hereby made the duty of such fish wardens and deputy fish wardens and of all county commissioners, state's attorneys, sheriffs and constables, in their respective counties, to see to the enforcement of the provisions of this act, and to cause complaint to be made and prosecuted, when aware of their own knowledge, or credibly informed of any violation of its provisions and said complaint may be made by either or any of such officers upon information and belief. And the said officers in this section named are authorized to arrest any person found violating the provisions of this statute, when detected in the act, or found with the fish in their possession at the time of arrest, and to take any such person before the nearest justice of the peace for further proceedings, by complaint and trial. And the fish wardens, sheriffs or constables, shall have the right and it shall be their duty to go upon the land or premises of any person and take, remove and destroy any seine, net, set line or trap, found in the waters of any stream in this state, without regard to whether fish are actually being killed or taken thereby, and to prosecute the person placing, using or maintaining the same in said water.

3264. Penalty for violation of this act. [Ch. 90, '95.] § 7. Any person or persons, or officers or servants of any company or corporation, convicted of violating any of the provisions of this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in a sum not less than twenty-five dollars nor more than one hundred dollars for each offense.

3265. Proceeds of fines, how disposed of. [Ch. 90, '95.] § 8. All fines recovered under the provisions of this act shall be paid one-half to the person giving the information of the offense, and the other half shall be paid into the county treasurer of said county to be placed by the county treasurer in a fund known as the fish fund. That said fund shall be kept inviolate and paid out only upon the order of the state's attorney or county commissioners of said county. That the same may be paid out upon the order of the state's attorney upon his filing a duly verified account of expense incurred in the obtaining of evidence and prosecution for violation of this act, or the same may be paid out by the order of the county commissioners for the propagation, dissemination and preservation of food fish in said county.

3266. Prosecutions, how commenced. [Ch. 90, '95.] § 9. All prosecutions for the violation of any of the provisions of this act shall be commenced before any justice of the peace, in the county wherein the offense shall have been committed; and any such justice of the peace shall upon his knowledge or upon the oath of any competent person, issue his warrant to any sheriff, constable or fish warden of his county for the arrest of any person or persons charged with the violation of any of the provisions of this act and upon the arrest of any such person or persons, shall proceed in the hearing of said complaint as in other cases of misdemeanor cognizable before justices of the peace. It is hereby made the duty of the state's attorney of any county upon being served with a written notice by any resident in his county giving the name or names of any person supposed to be violating this act to file his complaint upon information and belief, charging said parties with the violation of said law, with some justice of the peace and to immediately prosecute said case to final judgment.

3267. Penalty of officers. [Ch. 90, '95.] § 10. Any officer or officers hereinbefore named who shall knowingly or wilfully commit any violation of the provisions of this act or who shall wilfully refuse to

perform the duties herein mentioned, shall be guilty of a misdemeanor and upon conviction of such offense before a magistrate shall be fined for each offense not less than five dollars nor more than fifty dollars.

3268. Judgments. [Ch. 90, '95.] § 11. The court must in all cases of conviction under this act, when any fine is imposed, order as part of the judgment of the court that the offender shall be committed to jail, there to remain until said fine and the costs are fully paid or otherwise legally discharged; provided, the term of imprisonment shall not exceed thirty days for each offense.

ARTICLE 8. PRAIRIE FIRES.

GENERAL REGULATIONS.

3269. When setting of fire forbidden. If any person or persons shall set or cause to be set on fire any woods, marsh or prairie, or any grass or stubble lands in the months of September, October, November, December, January, February, March, April, May or June, except as hereinafter provided, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined a sum not more than one thousand dollars nor less than ten dollars, and imprisonment in the county jail a period not longer than six months, one or both at the discretion of the court, and shall also be liable in a civil action to any person or persons damaged by such fire to the amount of such damages. [C. L. 2392.]

3270. Permitted, when. For the purpose of destroying any grass or stubble that may be on any piece of land at the time any person or persons commence to break or plow the same, it shall be lawful for such person or persons to set the same on fire at any time in the year; provided, that at the time of setting such grass or stubble on fire there shall be a strip of land well plowed or burned over at least fifty feet in width, completely encompassing the place where such fire is set. [C. L. 2393.]

3271. Accidental damages. If any fire, set as provided in section twenty-three hundred and ninety-three, should by accident and without any fault or neglect of the person or persons setting the same, get beyond his or their control, such person or persons shall be liable as provided in section twenty-three hundred and ninety-two for all damages done by said fire, but not otherwise. But if such fire should by negligence, carelessness or be intentionally permitted to spread beyond the bounds of such strip of land mentioned in section twenty-three hundred and ninety-three, then the person or persons setting such fire shall be liable both civilly and criminally, as provided in section twenty-three hundred and ninety-two. [C. L. 2394.]

3272. Grasshoppers' destruction. It shall be lawful for any person or persons at any time between the twentieth day of April and the twentieth day of June to set on fire, for the destruction of grasshoppers, any marshes, prairies, grass or stubble lands owned or occupied by him, her or themselves, or any marshes, prairies, grass or stubble lands adjacent thereto; provided, that the person or persons desiring to set such fire shall give at least twenty-four hours' notice to all persons residing within one and a half miles of the place where the fire is to be set, and shall state at the time of giving said notice the time when and the place where such fire will be set. Such person or persons shall take all necessary precaution, before the setting of such fire, to prevent damage by the same. [C. L. 2395.]

3273. Fire limited. Fire set under provisions of section twenty-three hundred and ninety-five shall not be allowed to spread beyond the control of the person or persons setting the same, and shall be subdued and extinguished the same day on which it is set. [C. L. 2396.]

3274. Penalty. Any person or persons violating the provisions of section twenty-three hundred and ninety-six shall be liable in a civil action to any person or persons damaged by such fire, to the amount of such damage; and in case any person or persons shall negligently, carelessly, wilfully, maliciously or intentionally violate any of the provisions of section twenty-three hundred and ninety-six, such person or persons shall be liable both civilly and criminally the same as though they had violated the provisions of section twenty-three hundred and ninety-two of this act. [C. L. 2397.]

3275. Penalty for setting fire. If any person or persons shall wilfully, negligently or carelessly set or cause to be set on fire any woods, marsh or prairie in the state of South Dakota, or if any person or persons having made any camp or other fire shall leave the said fire without having thoroughly extinguished the same, so that the fire shall spread and burn any wood, marsh or prairie, the person or persons guilty of setting or causing to be set such fire or leaving such camp or other fire without having thoroughly extinguished the same, so that the fire shall spread therefrom, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not to exceed two hundred dollars, or imprisoned in the county jail not more than one year, or by both such fine and imprisonment in the discretion of the court, and shall also be liable in a civil action to any person or persons or corporation damaged by such fire, to the amount of such damage. [C. L. 2398.]

3276. Responsibility of persons setting fire. If the ranch, buildings, improvements, fencing, timber, marsh or other property of any person, persons or corporation shall be injured or destroyed by any such

fire as described in the section twenty-three hundred and ninety-eight, the person or persons who shall cause or allow the same as therein provided shall be responsible to the person, persons or corporation injured thereby for all damage or injury caused or sustained by reason of such fire. If the cattle range or improvements of any person, persons or corporation shall be injured or destroyed by any such fire as described in section twenty-three hundred and ninety-eight, or if the hay upon any such range or the grass growing thereon shall be injured by any such fire as aforesaid, the person or persons who shall cause or allow the same as therein provided shall be responsible to the person, persons or corporation owning or claiming the same and injured thereby, for all damage or injury caused or sustained by reason of any such fire. [C. L. 2399.]

3277. Proof required to establish liability. In any action instituted in any court to recover damages under the provisions of this act, it shall not be necessary for any person, persons or corporation injured by any such fire to allege in their pleadings, or prove on the trial of such action, title to the real property over which such fire has spread, but it shall be sufficient in any such action to allege and prove that the person, persons or corporation so injured was or were in the occupancy or possession of any such ranch, buildings, improvements, fencing, timber, marsh or other property, claiming the right to and occupying with cattle any such cattle range, it being the purpose and intention of this act to protect the possession as aforesaid of any person, persons or corporation, whether such person, persons or corporation have title to the land claimed or occupied by such person, persons or corporation or not. [C. L. 2400.]

FIRE-GUARDS.

3278. Exempting from taxation. For the purpose of securing protection against prairie fires to homesteads, pre-emptions, timber claimants and all persons owning or having in charge any tract of land consisting of one hundred and sixty acres more or less, who shall break or plow a fire-guard thirty-three feet in width encompassing entire any such tract as described in this section, the amount of land contained in such fire-guard shall be exempt from taxation; provided, it shall be kept free from grass, weeds and all other combustible matter from September fifteenth to May tenth in each year, and shall remain exempt as long as the provisions of this section are complied with. [C. L. 2401.]

3279. More than one quarter section. Any person claiming or owning any tract of land consisting of more than a quarter section lying in a body, shall not encompass less than that amount with a fire-guard as

described in section twenty-four hundred and one, unless they have a fractional part or parts thereof not adjoining each other, in which case they may encompass them severally with fire-guards and be entitled to the benefits of this act. [C. L. 2402.]

3280. Duty of road overseer. Where persons have failed to make or cause to have made fire-guards in compliance with sections twenty-four hundred and one and twenty-four hundred and two, it shall be the duty of the road overseer in said district to make or cause to have made along the line of all public roads adjoining such lands a fire-guard one rod in width on each side of such road, in the manner prescribed in section twenty-four hundred and one, and said overseer shall have power to warn out persons liable for road and poll tax to perform such service as is prescribed by law, and persons performing such service shall be allowed the same rates as for road work. It shall also be the duty of the road overseer to report to the town or county assessor on the first Monday in December in each year the numbers of the land and, if known, the names of the persons owning or claiming the same, where fire-guards have been made as specified in this section. [C. L. 2403.]

3281. Conflict with other laws. Nothing in this act shall be so construed to deprive of benefit any persons who have or may comply with sections twelve hundred and thirty-six and twelve hundred and thirty-seven, and such persons shall construct fire-guards as specified in section twenty-four hundred and three, or by mowing and burning prior to September fifteenth in each year, and such parties shall be liable for all damages done by such fire. [C. L. 2404.]

3282. Railroad companies to give notice. [Ch. 90, '93.] § 1. Whenever any railroad company owning or operating any line of railroad in this state shall deem it necessary to burn or extend any fire-guard along any line of railroad, or any part thereof, and beyond the limits of the right of way it shall cause notice thereof to be given to the owners and occupants of the real property upon which such extension is proposed to be constructed of such necessity and of its intention to construct the same.

3283. Service of notice, how made. [Ch. 90, '93.] § 2. Such notice shall be served upon the occupants of such lands in the manner provided by law for the service of summons in civil actions in the circuit court, and in the same manner upon owners thereof resident within this state: such notice shall be served upon all owners of such lands not residing

within the state, and upon unknown owners by publication thereof once in each week for four successive weeks in a newspaper published and of general circulation in each county where such extensions are to be made.

3284. Notice, what to contain. [Ch. 90, '93.] § 3. The notice shall designate the places where and the lands upon which such extensions are to be made, and shall also notify the owners and occupants thereof, that unless within thirty days after the service, or first publication thereof, the owners and occupants shall consent and agree in writing that such extension may be made, the company will apply to the circuit court, in term time or vacation, of [in] the county where such lands or some part thereof are situated, at a time and place to be specified in such notice, for an order directing the sheriff of each county to summon a jury of three resident freeholders of the county, not interested in the proceedings, to view the premises and assess the damages sustained by each owner or occupant by reason of the making of such proposed extension.

3285. Jurors, how summoned. [Ch. 90, '93.] § 4. At the time and place specified in the notice mentioned in the preceding section, upon making proof of the same to the satisfaction of the county, an order for the summoning of a jury of three, to assess the damages to the owners of land who shall not consent to the making of the extended fire-guard, shall be entered by the court and directed to the sheriff of the county, who shall proceed at once to summon such jury.

3286. Duty of jurors. [Ch. 90, '93.] § 5. The jurors so summoned shall each take and subscribe an oath to fairly and impartially assess all such damages as will be sustained by any owner of any land upon which any such extended fire-guard is proposed to be constructed according to the best of his knowledge and ability. The jury under charge of the sheriff shall proceed to view the premises and assess the damages, and make report thereof in writing, signed by each and file the same in the office of the clerk of the court. If no objection to the report shall be filed within ten days after the report of such jury is filed, then the same may, upon application, be confirmed by the court and an order entered permitting such railroad company to enter upon such lands and burn thereon a suitable fire-guard of the width outside the right of way designated in such order, upon payment to the owner or deposit in court of the amount of such damages.

3287. Railroads may enter upon lands belonging to state. [Ch. 90, '93.] § 6. Any railroad company, for the purpose of constructing extended fire-guards as provided in this act, is hereby given the right to enter upon any land belonging to the state, not occupied and burn such

fire-guard when necessary, not exceeding two hundred feet in width on either side of the right of way.

3288. Compliance with this act shall constitute defense, when. [Ch. 90, '93.] § 7. Compliance with the provisions of this act shall constitute a complete defense to any action for trespass against such railroad company, but not to any action for damages outside the limits prescribed by the order of the court.

3289. Electors may instruct supervisors. [Ch. 91, '93.] § 1. That in all organized civil townships in this state at the annual town meeting of the electors thereof in March of each year, the electors shall have the power to instruct the township supervisors to plow or to have plowed, fire-guards around every township, not less than ten (10) nor more than twenty (20) feet in width, commencing two rods from center of roadway and plowing towards center of same, unless interfering with shade trees along roadway in which case they shall commence as much less than two rods as the trees are distant from inside of road line; said plowing shall not be at the cost of more than four dollars per acre for the first plowing and at not more than two dollars per acre for each subsequent plowing; and the said electors may provide fire-guards each way across the center of area so inclosed and at said meeting they shall vote a tax in addition to [the] amount necessarily levied for other purposes upon the real property including railroads embraced in said area, for the purpose of defraying the necessary expense thereof.

3290. May enter upon private property. [Ch. 91, '93.] § 2. For the purpose of plowing fire-guards, the supervisors or the parties employed by them for that purpose, may, by and with the consent of the owner thereof, enter upon lands adjacent to the right of way and construct said fire-guards upon the real estate of private persons.

3291. May be constructed by county commissioners. [Ch. 91, '93.] § 3. In counties containing areas not embraced in any civil township fire-guards, as described in section one, may be constructed under the supervision of the county commissioners of the county and the cost thereof met by a special levy upon the real and railroad property included in the area embraced within said fire-guards.

3292. May use general road fund. [Ch. 91, '93.] § 4. Any civil township or county not organized into civil townships may use one-half of the general road fund to help defray the expense of said fire-guards.

3293. Duty of supervisors. [Ch. 91, '93.] § 5. As soon as October first or prior thereto if there is danger from prairie fires, it shall be

the duty of all road supervisors whether in organized or unorganized townships to burn the grass along the roadway between the fire-guards when there is plowing along both sides of said roadway.

ARTICLE 9. BOUNTY FOR SUGAR.

3294. Bounty provided. [Ch. 146, '90.] § 1. Every person who, or firm or corporation which, shall manufacture in the state of South Dakota sugar, syrup or molasses from sugar beets, shall be entitled to receive from the state a bounty for such manufacture, from sugar beets raised in this state as herein provided, to wit: For raw, granulated or refined sugars, one cent per pound; for syrup or molasses, two cents per gallon.

3295. Proof of manufacture — certificate — warrant on the state treasurer. [Ch. 146, '90.] § 2. Proof of production of beets and manufacture of sugar, syrup or molasses within the state may be made at any regular meeting of the board of county commissioners of the county in which such sugar, syrup or molasses is manufactured, and such proof must be made to the satisfaction of such board of county commissioners, under such regulations as the governor, state auditor and state treasurer may establish. When proof is made as aforesaid, the board of county commissioners shall issue to the person, or firm or corporation claiming the bounty a certificate, stating the amount of bounty earned. If, upon the presentation of such certificate to the state auditor, said auditor is satisfied that the bounty has been earned in accordance with the provisions of this act, he shall issue to the person, firm or corporation entitled thereto, his warrant upon the state treasurer for the bounty so earned.

BOUNTY FOR TREE PLANTING.

3296. A bounty for tree planting provided. [Ch. 152, '90.] § 1. Every person planting one acre or more of prairie land within ten years after the passage of this act, with any kind of forest trees of not less than nine hundred trees per acre, and one hundred or more of evergreens and successfully growing and cultivating the same for three years, shall be entitled to receive for ten years after the third season of such planting an annual bounty of two dollars for each acre of forest trees, not to exceed six acres, and one dollar for every one hundred evergreens, not to exceed twelve hundred, so planted and cultivated, to be paid out of the state treasury: but such bounty shall not be paid longer than such grove of trees is maintained and kept in growing con-

dition; provided, that trees may be planted in rows running east and west across a quarter section, four feet apart in a row, each row to be in lieu of an acre as above prescribed, but the bounty for such rows shall in no case exceed twelve dollars.

3297. Proof of planting, certified list by county auditor. [Ch. 152, '90.] § 2. Any person wishing to secure the benefits of this act shall within three years after the planting such grove of trees, and annually thereafter, file on or before the first Monday of July with the county auditor of the county in which the same is located a correct plat of the land, describing the section or fraction thereof on which such grove has been planted or cultivated, and shall make due proof of such planting and cultivation as well as of the title to the land by oath of the owner and the affidavit of two householders residing in the vicinity, setting forth the facts in relation to the growth and cultivation of the grove of trees for which such bounty is demanded. The several county auditors shall on or before the first Monday of August of each year forward to the state auditor a certified list of all the lands and tree planting reported and verified to them, in compliance with this act, with the name and post-office address of the respective owners thereof; provided, this act shall not apply to any trees planted upon land entered and acquired under the timber culture laws of the United States.

3298. Warrants for bounty. [Ch. 152, '90.] § 3. If the state auditor shall find that the provisions of this act have been duly complied with he shall issue to the several applicants entitled thereto his warrant upon the state treasurer for the bounty so earned.

ARTICLE 10. NOXIOUS WEEDS.

3299. Duty of owner of land to destroy certain noxious weeds. [Ch. 116, '90.] § 1. Every person and every corporation shall destroy on all lands which he or it may own or occupy, all weeds of the kind known as Russian thistle, Canada thistle and Cockle burr, at such time as the township board of supervisors, or the board of county commissioners, in counties which have not been organized into townships, may direct; and notice shall be published in one or more county papers for a time not less than three weeks before the time fixed upon for the destruction of said noxious weeds; provided, that if there be no newspaper published in the county, then the said notice in lieu of such publication shall be posted the same as election notices are posted.

3300. Time fixed by township supervisors or county commissioner. [Ch. 116, '90.] § 2. It shall be the duty of the township supervisors

or the board of county commissioners to fix the time for the destruction of all noxious weeds and to provide for their destruction in such manner as to prevent their bearing seed.

3301. Duty of overseer of highways. [Ch. 116, '90.] § 3. Every overseer of highways of every township or county shall also at the same time and in like manner, destroy all such noxious weeds, either on the highways of his road district or on any unoccupied land therein, upon which the owner or lessee thereof shall neglect or refuse so to do; and for which service such overseer of highways shall receive as compensation a sum to be fixed by the board of county commissioners to be paid out of the general county fund; provided, however, that the compensation for the said services shall not be less than two dollars per day.

3302. Tax to be levied. [Ch. 116, '90.] § 4. It shall be the duty of the overseer of highways to present to the board of county commissioners an itemized account, verified under oath, showing description of each piece of land upon which noxious weeds have been destroyed in accordance with the provisions of this act and the amount of the charge for such service by separate items; and said amounts shall become a lien against the lands so described, except in case of the destruction of noxious weeds upon the public highways. The amount of cost of the destruction of such noxious weeds as so certified shall be placed upon the next tax list in a separate column headed "for the destruction of noxious weeds" as a tax against the land upon which such noxious weeds were destroyed, subject to all the penalties thereof, and to be collected as other taxes, and the entry of such tax upon the tax list shall be conclusive evidence of the liability of the land to such tax.

3303. Certificate to county clerk. [Ch. 116, '90.] § 5. It shall be the duty of all overseers of highways to certify to the county clerk in an itemized account verified by oath the amount of labor performed in destroying noxious weeds on all lands not public highways on or before the fifteenth day of September in each year.

3304. Duty of county clerk. [Ch. 116, '90.] § 6. It shall be the duty of the county clerk to enter upon the tax list in a separate column for that purpose headed "for the destruction of noxious weeds" an amount equal to the cost of such labor as a tax against all lands not public highways upon which such noxious weeds were destroyed.

3305. Penalty for neglect to comply. [Ch. 116, '90.] § 7. If the owner or occupant of any such lands, or the overseer of any highway, or the board of county commissioners, or board of township supervisors in any county or township of this state shall fail to comply with any of the requirements of this act they shall forfeit to the county for such

offense a penalty of not less than five nor more than fifty dollars; and upon complaint the state's attorney shall prosecute for any neglect of duty on the part of the owners or occupants of lands, overseers of public highways, boards of county commissioners or township supervisors. All forfeitures arising under the provisions of this act shall inure to the general fund of the county in which action is brought.

3306. State's attorney, liability of. [Ch. 116, '90.] § 8. The state's attorney shall be liable under his bond for any failure to comply with the provisions of this act.

3307. Notice to land owners. [Ch. 116, '90.] § 10. Notices to the owner of the land provided to be given under the provisions of this act shall be made in the same manner as summons in the circuit court.

ARTICLE 11. FIRE-ESCAPES.

3308. Duties of proprietors of public buildings. The owners and proprietors of all hotels and other public buildings in the state of South Dakota, over two stories in height, are required to provide safe and suitable fire-escapes from all rooms above the second story of such hotel, and when rooms have no outside windows there shall be affixed to the windows in the hallway leading from such rooms at least three fire-escapes in each window as herein directed. Said fire-escapes shall consist of at least one good cotton rope not less than one inch in diameter, to be securely and permanently fastened with iron rings or bolts at a point immediately outside or inside of at least one window in each and every room above the second story; and such rope or ropes shall be of length sufficient to reach to the ground; provided, however, if any such owner or proprietor of hotels above two stories provide good and sufficient iron ladders extending from each of the windows herein described, and from points immediately adjacent to each of such windows, to the ground, and securely and permanently fastened to said building, or shall have a fire-escape ladder in each of the aforesaid rooms and hall windows, of a sufficient length to reach from said windows to the ground, he will be deemed to have complied with the requirements of this act. [C. L. 2410.]

3309. Penalty. Every person violating any of the provisions of section twenty-four hundred and ten shall be punishable by a fine of not less than twenty-five dollars for each room in said hotel not provided with fire-escapes as required by this act. [C. L. 2411.]

ARTICLE 12. STAMPEDES IN PUBLIC BUILDINGS.

3310. Construction of doors of public buildings. All doors of ingress and egress in all buildings used for public assemblages of any character in

this state, including school houses, churches, theaters, public halls, city halls, court houses, factories, hotels and all other buildings wherein numbers of persons are employed or are in the habit of meeting together for any purpose, shall be so constructed as to open and swing outward, and doorways shall not be less than four feet in width with proper landings and stairways of at least equal width. [C. L. 2412.]

3311. To whom law applies. It shall be the duty of all persons owning or having charge of such buildings, including trustees, boards of directors and boards of education, to comply with the provisions of this act within six months after the same shall take effect [June first, eighteen hundred and eighty-seven]; provided, that nothing in this act shall be construed to require a change in the width of existing stairways and doorways, and that this act shall not apply to churches and school houses not within the limits of any incorporated city or village. [C. L. 2413.]

3312. Penalty. Any person or persons failing to comply with the provisions of this act, or who shall build, maintain or permit to be used any such building contrary to the provisions of this act, shall be deemed guilty of a misdemeanor. [C. L. 2414.]

3313. Fire-escapes. All factories, public halls, hotels and all other buildings in which large numbers of people congregate, which are two or more stories in height, shall be provided by the owners thereof with two or more fire-escapes, placed within easy access of the occupants of said building. [C. L. 2415.]

ARTICLE 13. WEIGHTS AND MEASURES.

3314. Bushel consists of how many pounds. A bushel of each of the articles enumerated in this section shall consist of the number of pounds avoirdupois respectively affixed to each, viz.:

- Barley, forty-eight pounds.
- Beans, sixty pounds.
- Bran, twenty pounds.
- Buckwheat, forty-two pounds.
- Beets, sixty pounds.
- Broom-corn seed, thirty pounds.
- Corn, shelled, fifty-six pounds.
- Corn in the ear, seventy pounds.
- Cloverseed, sixty pounds.
- Coal, stone, eighty pounds.
- Flaxseed, fifty-six pounds.
- Lime, eighty pounds.
- Oats, thirty-two pounds.

Onions, fifty-two pounds.
 Potatoes, Irish, sixty pounds.
 Potatoes, sweet, forty-six pounds.
 Peas, sixty pounds.
 Rye, fifty-six pounds.
 Salt, eighty pounds.
 Turnips, sixty pounds.
 Timothy seed, forty-two pounds.
 Wheat, sixty pounds. [C. L. 2416.]

3315. Ton of hay, cubic measure. A ton of hay shall consist of two thousand pounds; or, by measurement, three hundred and forty-three cubic feet after the same shall have been stacked thirty days, or such time as may be agreed upon between the parties. [C. L. 2417.]

3316. Perch of masonry. A perch of mason work or stone is hereby declared to consist of twenty-five feet cubic measure. [C. L. 2418.]

3317. Standard to be kept by state treasurer. The treasurer of this state shall procure and keep in his office at the capitol of the state the following standards of weights and measures, which shall conform in every practical particular to the United States standards of weights and measures, to wit: One bushel, one half-bushel, one peck, one half-peck, one quart, one wine gallon, one wine half-gallon, one wine quart, one wine pint, one wine gill; said measures shall be made of copper or other suitable and substantial material; also, one surveyor's chain thirty-three standard feet in length, one yard measure, one foot measure, and one inch measure; also, one one-hundred-pound weight, one fifty-pound weight, one twenty-five-pound weight, one ten-pound weight, one one-pound weight, one half-pound weight, one-quarter-pound weight, one one-eighth of a pound, one one-sixteenth of a pound or one-ounce weight, one set of apothecaries' weights from one pound to one grain, one set of troy weights from one pound to one; besides such other scales, beams and balances as shall be necessary to test other weights by these standards; which measures, weights, scales, beams and balances are hereby declared to be the legal standards of weights and measures for this state. The said state treasurer shall be charged with the custody and accountable to the state for the proper use and care of the same. Said standards shall be used only for testing the standards provided for in section twenty-four hundred and twenty, and said treasurer shall keep a record of all county weights, measures, beams and balances marked and tested by him. [C. L. 2419.]

3318. Duplicates may be purchased. The county commissioners of each county are hereby authorized to purchase such duplicates of the

above enumerated weights and measures as they may deem necessary for the use of their respective counties in carrying out the following provisions of this act, which duplicates shall be paid for by the county and be delivered to the sheriff, who is hereby declared to be the sealer of weights and measures for the county, and may appoint such deputies as he may consider necessary in different parts of the county who shall possess the same powers and perform the same duties under this act as the sheriff may, and may furnish such deputies with such duplicates as the county commissioners may be willing to provide for their separate use, or may allow them to use those provided for himself. Each and every such sealer and deputy sealer of weights and measures shall give a bond to the county of not less than double the cost of the duplicates furnished him, conditioned that he will safely keep and care for such duplicates, and in good condition will turn them over to his successor, and upon said bond shall take and subscribe an oath of office of substantially the same form as that administered to other county officers. [C. L. 2420.]

3319. Sheriff to test weights and measures. The sheriff as ex-officio sealer of weights and measures shall in the month of July in each year test by his duplicates all scales, weights and measures found by him in his county, used as provided in section twenty-four hundred and twenty-two, and shall give the person in charge thereof a certificate of the correctness thereof if found to be correct, and if found to be incorrect he shall cause the same to be made correct if it can so be done, and if not he shall mark the same "condemned." He shall keep a record of all such certificates issued by him and of all his transactions under this act. For testing any measure, weight or scale as provided in this section, he may charge the owner or person in charge the sum of fifty cents; provided, that when any scale is tested the certificate shall cover the weights used with scale, and the sealer shall not be allowed to charge more than fifty cents for testing each scale and its several weights. [C. L. 2421.]

3320. Power of county commissioners. The county commissioners of each county shall prescribe, by resolution to that effect, what kinds and quantities of goods, wares, merchandise, grain, live stock and produce may be sold or exchanged with or without the use of the standard weights and measures and tested scales, and may amend such resolution at any regular meeting, which resolution and amendments shall be entered in the minutes of their meeting and published as part of their proceedings; and it shall be unlawful for any person, firm or corporation by themselves or any representative to use any scale, weight or measure for computing the quantity of any goods, wares, merchandise, grain, live stock or produce to be bought or sold by him or them in any

greater quantity than that allowed by the board of county commissioners of the county without having the same conform to the standard provided for by this act, and having the same tested as provided for in section twenty-four hundred and twenty-one, or under the conditions named in section twenty-four hundred and twenty-four. [C. L. 2422.]

3321. Complaint of violation — duty of dealer. Any person believing any dealer is violating any of the provisions of this act or any subsequent resolution of the board of county commissioners made by authority hereof, may make complaints in writing to any sealer or deputy sealer and deposit with him five dollars, setting forth the particular facts of such violation, and that he has reason to believe that the same are true. Upon such complaint such sealer or his deputy shall forthwith test the scale, weights or measures respecting the matter complained of by his duplicates and if found to conform thereto he may convert the five dollars so deposited by the complainant to his own use as his fees for such service. If he find that any of the matters complained of be true he shall return the five dollars to the complainant, and it shall be his duty to forthwith arrest the person in charge of such scales and bring him to trial before any justice of the peace in the county, and upon conviction such person, whether the owner or not, shall be guilty of a misdemeanor and punishable in the discretion of the court. In all such cases the sealer or deputy sealer making the test shall make and swear to the complaint in court and shall be entitled to the same fees as allowed officers making arrests upon a warrant, besides the sum of one dollar for making the test. Any sealer may upon his own view of violation of the provisions of this act or any subsequent resolution made by the board of county commissioners of his county by authority hereof, arrest and bring to trial such offender in the manner above provided. [C. L. 2423.]

3322. Duty of dealer to have weights and measures tested. It shall be the duty of every person, firm or corporation who desires to use any scale, weight or measure for computing the quantity of any goods, wares, merchandise, produce, grain or live stock to be bought or sold by him or them in greater quantity than those provided in the resolutions of the county commissioners of his county, to send by mail a notice to any dealer to test such scales, weights or measures, and it shall be the duty of any dealer receiving such notice to test such scale, weights or measures within ten days, and during such time before the same are tested the same may be used for such purpose, and the user shall be liable only for damages in a civil action. [C. L. 2424.]

3323. Act take effect. when. This act as to section twenty-four hundred and nineteen, shall take effect from and after its passage and ap-

proval; as to sections twenty-four hundred and twenty, twenty-four hundred and twenty-one, twenty-four hundred and twenty-two, twenty-four hundred and twenty-three and twenty-four hundred and twenty-four, it shall take effect and be in force in each county in this state upon a resolution to that effect adopted by a majority of the board of county commissioners thereof. [C. L. 2425.]

ARTICLE 14. LICENSE.

PEDDLERS'.

3324. Peddlers without license, unlawful. [Ch. 102, '97.] § 1. That on and after the passage and approval of this act it shall be unlawful for any person to peddle or hawk any goods, wares, or merchandise whatsoever without first having procured a license from the county auditor of the county wherein such peddling or hawking is to be conducted.

3325. Fee. [Ch. 102, '97.] § 2. Each peddler or hawker traveling with a pack and on foot shall pay a license of not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) per year.

3326. Fee with wagon. [Ch. 102, '97.] § 3. Each peddler or hawker traveling with a wagon or other vehicle shall pay a license of not less than fifty dollars nor more than one hundred dollars per year.

3327. Penalty for taking orders. [Ch. 102, '97.] § 4. Each peddler or solicitor taking orders for grocery, clothing, hardware, or other mercantile establishments shall pay a license of not less than seventy-five dollars (\$75.00) nor more than one hundred and twenty-five dollars (\$125.00) per year.

3328. Disposition of license money. [Ch. 102, '97.] § 5. All moneys derived from licenses received under the provisions of this act shall be turned into the county general fund of each county.

3329. Peddler to exhibit license. [Ch. 102, '97.] § 6. Each peddler, hawker or solicitor taking out license under the provisions of this act shall be compelled to exhibit such license whenever called upon by any party to whom such peddler, hawker or solicitor is endeavoring to make sale of goods.

3330. Term of license. [Ch. 102, '97.] § 7. No license issued under the provisions of this act shall be for a less period than one year.

3331. Act construed. [Ch. 102, '97.] § 8. The provisions of this act shall not be construed to apply to runners traveling for wholesale houses and taking orders from merchants only, nor to peddlers or hawkers in farm products.

3332. Penalty. [Ch. 102, '97.] § 9. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00)

3333. Duty of county commissioners. [Ch. 102, '97.] § 10. It shall be the duty of the county commissioners to fix the amount of said license and the county auditor shall issue such license upon payment of this fee.

OPERATING STEAM THRESHING MACHINES.

3334. Duty of operator. [Ch. 145, '90.] § 1. It is hereby made the duty of every person or persons owning or operating steam threshing machines to thoroughly extinguish the fire in connection with the same before leaving said machine for any purpose whatsoever, or to leave a competent person in charge of said machine.

3335. Owner responsible for damages by fire while in transit. [Ch. 145, '90.] § 2. The owner of any steam threshing machine, while in transit from one place to another, shall be subject to all the provisions of this act, and is hereby held responsible for any and all damage caused by any fire set by said machine while in transit from place to place.

3336. Further responsibility. [Ch. 145, '90.] § 3. If the buildings, grain, hay, implements, fencing, timber, or any other property of any person or persons should be injured or destroyed by fire caused or set by any steam threshing machine, the person or persons owning or operating said machine shall be responsible to the person or persons injured thereby for all damage or injury caused or sustained by reason of such fire.

3337. Proof in case of action in court. [Ch. 145, '90.] § 4. In any action instituted in any court to recover damages under the provisions of this act, it shall be necessary to prove that said machine was the cause or means of setting such fire, and that it was through the carelessness or negligence of the person or persons operating said machine, or that said machine was imperfect and unsafe in its construction.

3338. Unlawful use — bond. [Ch. 145, '90.] § 5. It shall be unlawful for any person to use a steam threshing machine in this state until he shall first enter into a bond with good and sufficient surety in the sum of five hundred dollars, payable to the state; said bond to be approved by and filed with the clerk of the circuit court of the county where he resides, in case he is a resident of the state; and if he be a non-resident, with the state auditor, conditioned to pay all damages arising from any fire caused by him in violation of the provisions of this act.

3339. Failure to execute bond declared a misdemeanor. [Ch. 145, '90.] § 6. Any person who shall fail to execute and file the bond required in section five of this act shall be deemed guilty of a misdemeanor.

LAUNDRY LICENSE.

3340. When required. No person or persons not citizens of the United States, or who have not declared their intention to become such, shall be permitted to conduct or carry on the business of a public laundry in any incorporated city, town or village in this state without having first obtained a license for that purpose, as hereinafter provided. [C. L. 2436.]

3341. Who to fix license. The city council, trustees or other governing body of the respective city, town or village shall have the power to grant such license on the payment into the treasury of such city, town or village by the applicant for such license a sum to be assessed and fixed by the city council, trustees or other managing board, not less than ten dollars nor more than fifty dollars per annum. [C. L. 2437.]

3342. Authority by license. Such license shall authorize the person receiving it to carry on and conduct the business of the public laundry within such incorporated city, town or village for a period of one year from the time of granting the same. [C. L. 2438.]

3343. Temporary permit. If the city council, trustees or other managing board be not in session when the application is made, the clerk of such incorporated city, town or village may grant a written permission to the applicant to carry on and conduct the business of a public laundry until the end of the next session or meeting of such city council, trustees or other managing board, or if no action on the case be taken by the council, trustees or other managing board, then for the term provided in section twenty-four hundred and thirty-eight, and at the time of granting such license, the clerk may assess the amount to be paid into the treasury. [C. L. 2439.]

3344. Temporary permit, how vacated. When permission shall be granted in vacation as aforesaid it shall be the duty of the city council, trustees or other managing board, at their next regular meeting thereafter, to examine such permit, and if approved to proceed forthwith to assess and fix the amount to be paid for such license thereafter, which amount shall be paid as in the case of original applications, but if the same be not approved the license shall be vacated and no other sum shall be required to be paid than that fixed by the said clerk. [C. L. 2440.]

3345. Penalty. If any person or persons not citizens of the United States, or who have not declared their intention to become such, shall directly or indirectly carry on or conduct the business of the public laundry in any incorporated city, town or village without being first duly authorized by license or permit as aforesaid, such person or persons so offending shall forfeit and pay a sum not less than ten dollars nor exceeding one hundred dollars. [C. L. 2441.]

3346. Public laundries defined. Public laundries are defined within the meaning of this act to be any house, shed or building in which shall be carried on the business of washing and ironing of clothes, or either washing or ironing of clothes for hire or reward. [C. L. 2442.]

ARTICLE 15. PROTECTION OF MANUFACTURERS.

3347. Trade-marks, etc., to be recorded. It shall be the duty of the register of deeds of any county within the state, on the application of any person or firm domiciled within his county, in the state of South Dakota, or of any corporation created under the laws of this state, engaged in the manufacture or sale of ale, porter, lager beer, soda water, mineral water or other beverages in packages, to record in a book suitable for the purpose a description of the names, brands or trade-marks used by such persons or party for marking his casks, barrels, kegs, bottles, jugs, fountains, boxes or other packages, which book shall be and remain a public record in his office. [C. L. 2443.]

3348. Fee for recording. The register of deeds shall collect of any such person, firm or corporation making application to have any such description of name, brand or trade-mark recorded in said register of deeds' office a registration fee of one dollar for each and every such description of name, brand or trade-mark before the same be received for record and entered upon the books of the register of deeds' office. [C. L. 2444.]

3349. Misappropriation is larceny. If any person or persons shall wilfully and without the consent of the owner appropriate to his or their own use, sell, destroy or otherwise dispose of any such cask, barrel, keg, bottle, jug, box, fountain or other package, not the property of himself or themselves, and having thereon the names, marks or brands of any such manufacturer or dealer, the person or persons so offending shall be deemed guilty of larceny and be subject to all the provisions of the law applicable to such offense. [C. L. 2445.]

3350. Penalty for destroying trade-marks on casks, etc. If any person shall unlawfully and maliciously obliterate, injure or destroy the names, marks or brands affixed to any cask, barrel, keg, bottle, jug,

fountain, box or other package used or intended to be used for the purpose aforesaid, and not the property of himself, the person so offending shall be deemed guilty of a misdemeanor and be subject to fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding sixty days, or both, as the court may deem proper. [C. L. 2446.]

3351. Foreign corporations protected. Any person or firm residing out of the state, or any corporation created under the laws of any other state or territory, engaged in the business mentioned in section twenty-four hundred and forty-three, shall be entitled to the privilege and protection of this act; provided, they cause the record to be made as provided in said section twenty-four hundred and forty-three, in the office of the register of deeds of the county or counties where they or their duly authorized agents have their place of business within the state. [C. L. 2447.]

TRADE-MARKS.

3352. Lawful use of trade-marks. [Ch. 153, '90.] § 1. It shall be lawful for associations and unions of workmen to adopt for their protection labels, trade-marks and advertisements, used by such unions or associations, announcing that goods manufactured by members of such associations or unions are so manufactured by such members.

3353. Unlawful use of trade-marks. [Ch. 153, '90.] § 2. That any and all persons using such union or association trade-marks, labels or advertisements, whether exactly like such labels, trade-marks or advertisements or not, if with the intention to, or likely to, deceive the public, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment of not less than ten days nor more than thirty days, or a fine of not less than twenty-five dollars nor more than one hundred dollars, or both.

3354. Penalty. [Ch. 153, '90.] § 3. That every person who shall use any such counterfeited trade-mark, label or advertisements of such a union or association after having been notified that the same is so counterfeited shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment of not less than ten days nor more than thirty days, or by fine of not less than twenty-five dollars nor more than one hundred dollars, or both.

3355. Record of trade-marks. [Ch. 153, '90.] § 4. That every association of workmen or labor union adopting a label, trade-mark or advertisement of the kind specified in the first section of this act shall

record the same in the office of the secretary of state by leaving two copies of said labels or advertisements with said secretary of state, who shall, under his hand and seal, deliver to the association or union recording such label or advertisements a certificate of record, for which he shall receive a fee of one dollar.

3356. Injunction against use of counterfeits. [Ch. 153, '90.] § 5. That every association or labor union adopting a label, trade-mark or advertisement of the kind specified in the first section of this act may proceed by suit in any of the courts of the state to enjoin the manufacture, use, display or sale of counterfeits or imitations of such labels, trade-marks or advertisements, and that all courts having jurisdiction of the persons, and upon satisfactory proof of such wrongful use, shall grant an injunction for such wrongful use of such counterfeits and shall award the complainant such damages resulting from such wrongful use as may be proved, and shall require the defendants to pay to the complainant the profits derived from such wrongful use, or both profits and damages, and the court shall also order all counterfeit labels and advertisements in the possession or under the control of the defendant in such cause to be delivered to an officer of the court or to the complainants, to be destroyed.

3357. Injunction against use of genuine labels. [Ch. 153, '90.] § 6. In like manner such unions or associations of workmen shall be authorized to proceed against all persons who shall wrongfully use or display the genuine labels or advertisements of the respective associations or unions, not being authorized by such associations or unions to use or display the same, in any court having jurisdiction thereof.

ARTICLE 16. LOGS AND LUMBER.

3358. Lawful to boom in navigable rivers. It shall be lawful for any person having logs or lumber in any stream navigable for water crafts in this state, to boom such logs or lumber along the shore, and to secure the boom by means of piles driven in the stream, or by chains, ropes, timber or traverse poles made fast at points along the shore: provided, that there shall be at all times sufficient channel left clear for the free passage of any crafts or rafts usually navigating such streams. [C. L. 2448.]

CHAPTER 23. HOMESTEAD AND THE CONVEYANCE THEREOF.

3359. Exempt from judicial sale. The homestead of every family resident in this state, as hereinafter defined, whether such homestead be owned by the husband or wife, so long as it continues to possess the character of a homestead, shall be exempt from judicial sale, from judgment lien, and from all mesne or final process issued from any court. [C. L. 2449.]

Where one in possession puts up valuable improvements writes the owner that he is desirous of purchasing the land, asking for price, receives a reply fixing the price, and answers that the price is satisfactory, that he would forward the money and asks when deed will be ready, it is a contract for purchase. *Myrick v. Bill et al.*, 5 Dak. 167; 37 N. W. Rep. 369.

Person in possession under contract to purchase has an interest to which a homestead right will attach except as to the owner of the soil. Id.

3360. Family defined. A widow or widower, though without children, shall be deemed a family while continuing to occupy the house used as such at the time of the death of the husband or wife. [C. L. 2450.]

3361. Conveyance of, limited. [Ch. 76, '91.] A conveyance or incumbrance by the owner of such homestead shall be of no validity unless the husband and wife, if the owner is married, and both husband and wife are residents of this state, concur in and sign the same joint instrument; provided, however, if the husband or wife of the owner of the homestead is an inmate or patient of any insane asylum, the conveyance or incumbrance of the homestead shall be valid without the signature or concurrence of such insane husband or wife; provided, further, before the conveyance or incumbrance of the homestead shall be valid without the signature or concurrence of such insane husband or wife, the husband or wife who is the owner of the homestead shall petition the county court for an order authorizing such conveyance or incumbrance of the homestead to be made, which petition shall set forth that the husband or wife of the owner is insane, and the facts and circumstances on which the petition is founded, and description of the real estate sought to be conveyed or incumbered, and there shall be attached to said petition the certificate of the superintendent or manager of the insane asylum or the hospital for the insane that the husband or wife of the owner of such homestead is an inmate or patient of such insane asylum or hospital for the insane. Whenever any such petition is filed in any county court of this state it shall be the duty of such court, or the judge thereof, to fix a time for hearing such petition,

not less than four or more than seven weeks from the time of filing such petition, and to cause notice of such hearing to be given by publication of a notice thereof in some newspaper, published in the county in which the petition is filed, at least once a week for three successive weeks prior to such hearing, and upon the hearing of such petition, if the court or judge shall find that the facts set forth in such petition are true, and that there is no intent to defraud or injure the interest of such insane husband or wife in such homestead, the court or judge may make an order authorizing the conveyance or incumbrance of such homestead by the owner thereof without the signature or concurrence of such insane husband or wife. [C. L. 2451.]

Bill of sale of two buildings, one his dwelling, the other a storeroom connected therewith, situated upon a tract of land less than one acre, not joined in by wife void. *Myrick v. Bill et al.*, 5 Dak. 167; 37 N. W. Rep. 369.

A married woman estopped from claiming title against sheriff's deed on foreclosure where she joined in execution of mortgage to secure obligation on which she was joint debtor. *Yerkes v. Hadley et al.*, 5 Dak. 324; 40 N. W. Rep. 340.

After mortgage is paid off the husband cannot revive for purpose of securing another obligation. *Luce v. American Mortgage and Investment Company*, 6 Dak. 122; 50 N. W. Rep. 621.

A real estate mortgage executed and acknowledged by a wife and her husband upon the homestead, and executed in blank as to the sum to be secured thereby, and intrusted by her to the husband with authority to fill such blank for the sum of \$1,000, and which he, without the knowledge and consent of his wife, filled up with the sum of \$1,500 in the presence of the mortgagee and his attorney, is invalid in the hands of the mortgagee, as against the wife and the homestead property. *Ellis v. Wait*, 4 S. D. 454; 57 N. W. Rep. 232.

3362. Certain instruments valid. [Ch. 77, '91.] § 1. A conveyance of the homestead shall be valid and legal if the husband and wife, in case the owner is married, shall both execute such conveyance, whether the same be by joint instrument or by separate instruments.

3363. Certain instruments legalized. [Ch. 77, '91.] § 2. All conveyances of the homestead heretofore made, where the owner thereof was married at such time, are hereby legalized and declared valid, provided the husband and wife have each executed such conveyance, whether the same was by joint instrument or by separate instruments at different times.

3364. Liable for taxes only. The homestead shall be liable for taxes accruing thereon, and if certified and recorded as hereinafter directed shall be liable only for such taxes, and shall be subject to mechanics' lien for work, labor or material done or furnished exclusively for the improvement of the same, and the whole or a sufficient portion thereof may be sold to pay the same. [C. L. 2452.]

3365. Liable for purchase money. The homestead may be sold for any debt created for the purchase thereof. [C. L. 2453.]

3366. Must embrace residence. The homestead must embrace the house used as a home by the owner thereof, and if he or she has two or more houses thus used at different times and places, such owner may select which he or she will retain as a homestead. [C. L. 2454.]

Homestead not subject to sale for mechanic's lien. *Fallihee v. Wittmayer*, S. D. ; 10 N. W. Rep. 642.

Homestead is exempt from sale for a mechanic's lien. *Morgan et al. v. Benthien et al.*

Grantee takes homestead free from judgment liens or mechanics' liens. *Id.*

Exemption not a personal right dependent upon the occupation of the homestead but is a protection to the family of the indigent debtor. *Id.*

3367. Must be contiguous tracts. It may contain one or more lots or tracts of land with the buildings thereon and other appurtenances, subject to the limitations contained in the next section, but must in no case embrace different lots and tracts unless they are contiguous, or unless they are habitually and in good faith used as part of the same homestead. [C. L. 2455.]

3368. Area embraced. If within a town plat it must not exceed one acre in extent, and if not within a town plat it must not embrace in the aggregate more than one hundred and sixty acres. If the homestead is claimed upon any land, the title or right of possession to which was acquired or claimed under the laws of the United States relating to mineral lands, then the area of the homestead shall not exceed one acre whether within or without a town plat. [C. L. 2456.]

3369. Buildings embraced. It must not embrace more than one dwelling house or any other building except such as are properly appurtenant to the homestead as such; but a shop, store or other building situated thereon and really used or occupied by the owner in the prosecution of his own ordinary business may be deemed appurtenant to such homestead. [C. L. 2457.]

3370. Selecting and marking. The owner or the husband or wife may select the homestead, and cause it to be marked out and platted and recorded as provided in the next section. A failure in this respect shall not leave the homestead liable, but the officer having the execution against the property of such a defendant may cause the homestead to be marked off, platted and recorded, and may add the expense thence arising to the amount embraced in his execution. [C. L. 2458.]

Divorced wife retains no homestead rights in absence of a decree to that effect in such divorce proceeding. *Brady v. Kreuger et al.*, 8 S. D. 464; 66 N. W. Rep. 1083.

3371. How marked and described. The homestead shall be marked off by fixed and visible monuments, unless the same shall embrace the whole of a subdivision or lot, and in giving the description thereof when marked off as aforesaid the direction and distance of the starting

point from some corner of the dwelling house shall be stated. The description of the homestead, certified and acknowledged by the owner, shall be recorded by the register of deeds of the proper county in a book to be called the "homestead book," which shall be provided with a proper index. [C. L. 2459.]

3372. Change of homestead — limitations. The owner may from time to time change the limits of the homestead by changing the metes and bounds, as well as the record of the description, or may change it entirely; but such changes shall not prejudice conveyances or liens made or created previously thereto; and no such change of the entire homestead made without the concurrence of the husband or wife shall affect his or her rights or those of the children. [C. L. 2460.]

3373. New homestead exempt. The new homestead shall in all cases be exempt to the same extent and in the same manner as the old or former homestead was exempt. [C. L. 2461.]

District court on motion to set aside levy on a homestead has no power on affidavits to determine the question of homestead. *Dorsey v. Hall*, 5 Dak. 505; 41 N. W. Rep. 471. Must be by action. *Id.*

3374. Disputed homestead. When a disagreement takes place between the owner and any person adversely interested, as to whether any land or buildings are properly a part of the homestead, it shall be competent for the circuit court in any proper case to determine such question and all questions relating thereto. [C. L. 2462.]

It is use with the intent that gives homestead character. *Clark v. Evans et al.*, 6 S. D. 244; 60 N. W. Rep. 862.

Competent to show that owner of land held public office as tending to show residence. *Id.*

Where husband comes to this state alone, the wife who resides in a distant state requires only such homestead rights as resulted from the rights of her husband. *Id.*

3375. Order of succession. Upon the death of either husband or wife, the survivor may continue to possess and occupy the whole homestead until it is otherwise disposed of according to law; and upon the death of both husband and wife the children may continue to possess and occupy the whole homestead until the youngest child becomes of age. [C. L. 2463.]

3376. Descends free of debt. Such homestead shall descend according to the law of succession as provided by the civil code, unless otherwise directed or disposed of by will, and shall be held exempt from any antecedent debt of the parent, and if it descend to the issue of either husband or wife it shall be held by such issue exempt from debts of such husband or wife, except as in the following section provided. [C. L. 2464.]

3377. If no survivors — liable for debt. And if there be no husband or wife surviving, and no issue, the homestead shall be liable to

be sold for the payment of any debts to which it might at that time be subjected if it had never been held as a homestead. [C. L. 2465.]

3378. Limitation of devise. Subject to the rights of the surviving husband or wife as declared by law, the homestead may be devised like other real property of the testator. [C. L. 2466.]

3379. Family further defined. Every family, whether consisting of one or more persons, in actual occupancy of a homestead as defined in this chapter, shall be deemed and held to be a family within the meaning of this chapter. [C. L. 2467.]

3380. Gold or silver mines or mills not included. This chapter shall not be deemed or construed to include any gold or silver mine, or gold or silver mill, or any mill, smelter, or machinery intended or used for the reduction or milling of gold or silver ores. [C. L. 2468.]

CHAPTER 24. SOLDIERS AND SAILORS.

ARTICLE 1. BURIAL.

3381. Funeral charges. All honorably discharged soldiers, sailors or marines who served in the army, navy or marine corps of the United States during the war of the rebellion, who shall hereafter die within this state, and whose relatives and friends are unable or unwilling to defray the charges of their funeral, shall be buried at the expense of this state; such funeral expenses, including cost of burial lot, shall not in any case exceed the sum of fifty dollars. [C. L. 2469.]

3382. Interment. The interment shall be in this state, and shall not be made in any cemetery or plot used exclusively for the burial of the pauper dead. [C. L. 2470.]

3383. Duty of county judge. Upon notice to the county judge of the death of any soldier, sailor or marine within his county, mentioned in section twenty-four hundred and sixty-nine, it shall be the duty of said county judge to appoint a suitable person whose duty it shall be to carry into effect the provisions of this act in reference to the burial of such deceased soldiers, sailors or marines, for which service said person so appointed shall receive a fee not to exceed three dollars. It shall also be made the duty of the judge of probate to immediately notify the secretary of war of the death of any such soldier, sailor or marine, furnishing him with the name, age, date of birth, date of death, designating the company, regiment and name of the organization in which said soldier, sailor or marine served, and request that the said secretary of war furnish a headstone for such deceased soldier, sailor or marine, under the provisions of an act of congress authorizing the secretary of war to erect headstones over the graves of union soldiers who have been interred in private, city or village cemeteries, approved February third, eighteen hundred and seventy-nine; and when said headstone is so furnished it shall be the duty of said county judge or other person designated by him for such purpose, to cause the grave of said soldier, sailor or marine to be marked with such headstone; and the expense of erecting a headstone which may be furnished by the government of the United States, to mark the grave of a soldier, sailor or marine buried in this state, shall be paid by the state, the expense not to exceed in any case the sum of five dollars. [C. L. 2471.]

3384. Duty of other officers. All expenses of this act shall be approved, allowed and certified to in duplicate by the county judge; in the county in which said soldier, sailor or marine died or is buried.

such certificates, both original and duplicate, to be delivered by the county judge to the county clerk or auditor of such county, the original of which shall be by him forwarded at once to the auditor of the state, the duplicate to remain upon the files of his office. Upon the receipt by the auditor of the state of such certificate, he shall draw his warrant on the state treasurer in favor of the county judge for the amount specified therein, and it is hereby made the duty of the county judge to pay the same over to the person or persons entitled thereto. [C. L. 2472.]

3385. Appropriation. There is hereby appropriated out of the treasury of the state a sum sufficient to carry out the provisions of this act. [C. L. 2473.]

ARTICLE 2. PREFERMENT FOR OFFICIAL APPOINTMENT.

3386. To what applies. In every public department and upon all public works of the state of South Dakota, and of the cities, towns and villages thereof, honorably discharged union soldiers and sailors of the late war shall be preferred for appointment; age, loss of limb or other physical impairment which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the requisite qualifications and business capacity necessary to discharge the duties of the position involved. [C. L. 2474.]

3387. Penalty for disregarding. [Ch. 152, '93.] All officials or other appointing power in the public service who shall neglect or refuse to comply with the provisions of the preceding section shall be deemed guilty of a misdemeanor, and shall on conviction thereof be punished by a fine not exceeding one thousand dollars or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment at the discretion of the court. [C. L. 2475.]

Fact that applicant was a soldier in the late war must be communicated to appointing power to obtain rights thereby. *Thomas v. Commissioners of Beadle County*, 1 S. D. 452; 47 N. W. Rep. 527.

CHAPTER 25. MONOPOLIES, TRUSTS AND COMBINATIONS.

MONOPOLIES AND TRUSTS.

3388. Monopoly defined. [Ch. 94, '97.] § 1. Within the meaning of this act a trust or a monopoly is a combination of capital, skill, or acts of two or more persons, firms, corporations or associations of persons, first, to create or carry out restrictions in trade; second, to limit the production or to increase or reduce the price of commodities; third, to prevent competition in the manufacture, transportation, sale or purchase of merchandise, produce or commodities; fourth, to fix any standard or figure whereby the price to the public shall be in any manner established or controlled; provided, that nothing in this act shall be construed so as to include labor organizations.

3389. Unlawful to fix prices. [Ch. 94, '97.] § 2. That it shall be unlawful for any incorporated company, copartnership or association of persons in this state directly or otherwise to fix prices, limit the production or regulate the transportation of any product or commodity so as to obstruct or delay or prevent competition in such production or transportation or limit transportation of commodities or to fix prices therefor.

3390. Unlawful to combine. [Ch. 94, '97.] § 3. That it shall be unlawful for any incorporated company, copartnership or association of persons in another state to directly or otherwise combine or make any contract with any incorporated company, copartnership, association of person or persons in this state to combine or make any contract to fix prices, limit the production of commodity or regulate the transportation directly or otherwise of any product or commodity so as to obstruct or prevent competition or limit transportation or to fix prices therefor.

3391. Who deemed guilty. [Ch. 94, '97.] § 4. Any person or persons, officer or servants of any company, copartnership or association of persons convicted of violating any provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof for the first offense be fined not less than one thousand dollars, nor more than five thousand dollars, and upon conviction for the second offense not less than five thousand nor more than ten thousand dollars.

3392. Disposition of fines. [Ch. 94, '97.] § 5. All fines recovered under this act shall be paid one-half to the person or persons aggrieved and the other half shall be paid into the county treasury of the county

in which the conviction may be made to the credit of the general county fund of said county.

3393. Duty of state's attorney. [Ch. 94, '97.] § 6. It shall be the special duty of the state's attorney of each county in this state upon the affidavit of any person or persons aggrieved showing that any person or persons have violated any provisions of this act to make complaint or cause the arrest of such person or persons and to prosecute him or them to conviction if proved to be guilty, and it shall be the duty of the attorney general of the state upon the request of any state attorney for any county to aid in the prosecution of actions under this act.

UNLAWFUL TRUSTS AND COMBINATIONS.

3394. Defining which trusts are unlawful. [Ch. 154, '90.] § 1. That any combination, agreement or trust, made, entered into or formed between persons, copartnerships, or corporations in this state, or by and between any persons, copartnerships or corporations within this state with any person, copartnership or corporations without this state, with intent and which shall in any manner tend to prevent a free, fair and full competition in the production, manufacture or sale of any article or commodity of domestic growth, use or manufacture, or that tends to advance the price to the user or consumer of any article or commodity of domestic growth, use, production or manufacture beyond the reasonable cost of production or manufacture thereof, or that tends to advance the price to the user, purchaser or consumer of farm machinery, implements, tools, supplies, and lumber, wood and coal, imported into this state from any other state, territory or country, beyond the reasonable cost of production and sale or manufacture and sale of the same, or which tends to and does induce and accomplish a sale of wheat, corn, oats, barley, flax, cattle, sheep, hogs, or other farm or agricultural products for less than such farm or agricultural products are really worth at the time of sale, or for a less price than such farm or agricultural products would sell for in open market if such combination, agreement or trust did not exist, or tends to, or shall increase, enhance, or maintain, rates of interest on loans of money, for the forbearance of the payment of any sum of money, or debt, or to prevent a fair competition for a low rate of interest on loans, or for the forbearance of the payment of any debt or obligation, is hereby declared to be against public policy and unlawful and void, and any person or persons who shall be a party to any such unlawful combination, agreement or trust, or who shall in any way assist, aid or abet any such combination, agreement or trust, either as principal, agent, attorney, employe or otherwise, shall be

deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars or imprisonment in the state's prison not exceeding three years, or both such fine and imprisonment at [the] discretion of the court.

3395. Unlawful sale of articles or goods. [Ch. 154, '90.] § 2. Any person or persons who shall agree and undertake, as agent, to sell, and shall sell in this state, any of the articles, commodities, products or machinery, implements, tools, supplies or goods, wares and merchandise, mentioned in section one of this act, for a non-resident manufacturer of, or wholesale dealer in such articles, commodities, products, machinery, implements, tools, supplies or goods, wares and merchandise, while at the same time such non-resident manufacturer or wholesale dealer, refuses to sell at wholesale or manufacturers' prices, such farm implements, tools or supplies, as are furnished to such agent for sale in this state, to responsible and reputable wholesale or retail dealers in this state shall be deemed to have unlawfully combined and agreed within the meaning of section one of this act, with such non-resident manufacturer or wholesale dealer, with intent to prevent a full, free and fair competition in the sale in this state, of any such farm machinery, implements, tools or supplies furnished to such agent as aforesaid, and refused to be sold to wholesale or retail dealers in this state as aforesaid, and with intent to advance the price to the user and purchaser and consumer beyond the reasonable cost of manufacture and sale, as production and sale of such farm machinery, farm tools, farm implements and supplies refused to be sold as aforesaid to dealers in this state as aforesaid, and such agent or agents upon conviction thereof shall be punished by a fine of not more than one thousand dollars or an imprisonment in the state's prison not more than five years, or both such fine and imprisonment at the discretion of the court.

3396. Non-resident corporations, liability of. [Ch. 154, '90.] § 3. Any non-resident corporation, copartnership or company, or person, who shall ship or bring into this state for sale any of the commodities, products, or goods, wares or merchandise, machinery, tools or implements mentioned in section one of this act, to be sold only and exclusively by an agent or agents, or person or persons selected, appointed and controlled in the sale of such goods by such non-resident corporations, copartnership, company or person, in violation of the spirit, intent and purpose of this act, may be restrained by an order of injunction from any court of competent jurisdiction in this state from selling or disposing of any such commodities, products, goods, wares or merchandise, machinery, tools or implements, or having the same sold in this state until the defendant in such order offer the same for sale, or to be

sold, on like and regular terms, and without restrictions except price and terms of payment, to reputable and responsible wholesale or retail dealers of this state, without regard to location, who may desire to purchase the same or any portion thereof, for sale again. The order of injunction mentioned in this section may be issued upon affidavits which shall show to the satisfaction of the court or judge thereof to whom application is made that the person or persons, or copartnership or corporation named as defendant in the application and affidavit for an order of injunction has violated some provision of this act. The order of injunction issued upon such affidavits may be served in the manner now provided by law for the service of such orders and in the absence of the defendant therein, or his agent or attorney, such order of injunction may be served on any or all persons in this state having in possession and for sale, or in his possession for the use, or subject to the order or direction of the defendant or defendants in such proceeding, any of said articles or commodities or goods, wares and merchandise mentioned in section one of this act, the sale of which is restrained by this order. On the final hearing by the court if the application for injunction be sustained by the court, the court shall be rendered [render] judgment against the defendant in such proceeding and in favor of the plaintiff therein for all the costs incurred by the plaintiff therein, including such attorney's fee allowed by the court therein. Any judge of a circuit court or of the supreme court may in like manner enjoin and restrain any manufacturing or wholesale or retail business, being conducted or carried on in violation of any of the provisions or spirit and intent of this act from continuing such manufacturing or wholesale or retail business in this state, and all final restraining orders may be perpetual or for such period, and upon such terms and conditions as the court or judge thereof shall determine. All laws, rules and regulations now in force relative to applications for and granting orders of injunction in this state shall apply to proceedings under the provisions of this act, so far as the same are not different from, or in conflict with the provisions of this act.

3397. Duty of state's attorney. [Ch. 154, '90.] § 4. It is hereby made the special duty of each and every state's attorney of each and every county in this state, who shall have good reason to believe that any of the provisions of section one of this act are being violated by any person or persons in his county, or upon affidavit of two or more reputable persons made and delivered to him showing or stating affirmatively that any person or persons in his county have violated any of the provisions of section one of this act, to make complaint and cause the arrest of such person or persons, and to prosecute him or them

diligently to conviction, if proved to be guilty, and also at the request of any citizen of his county, and for good cause shown, apply for an injunctive or restraining order as provided in this act; provided, that the provisions of this section shall not be construed to prevent any person from making complaint to any court of competent jurisdiction for any violation of the provisions of this act, and in such case the court shall issue a warrant and proceed the same as though the state's attorney had made the complaint, and the [court] may also permit any attorney whom the complainant may employ to appear and prosecute such action at any stage of the proceedings therein, and such attorney's fee in any such action as the court may allow to such attorney shall be deemed a part of the costs of prosecution as mentioned in section one of this act.

[Ch. 171, '93.] And provided further, that any person or persons who may suffer damage by reason of the operation of any such pool, trust or combination defined in section one of this act or any pool, trust or combination formed without, but holding property within the state, may maintain an action therefor, and may recover the amount of damage sustained; and any person or persons who in good faith may have contributed any funds, or property, as a donation or otherwise, for location, building, or carrying on of any milling, or manufacturing, or other industry in this state, or any stockholder in any corporation or company formed for the purpose of carrying on and operating any such industry which milling, manufacturing or other industry may thereafter become the property of, or controlled by any such pool, trust or combination, without the consent of such person or stockholder, may maintain an action and recover against such pool, trust or combination, or individuals composing the same, judgment for the amount so contributed or invested in stock as the case may be, and the property, including the plant and all buildings, machinery and other property so owned or controlled by such trusts or combinations shall be liable to attachment and execution in such action, and may be sold to satisfy any judgment recovered therein; and the court in which such action is pending may appoint a receiver to take charge of such property and receive all rents, issued [issues] and profits therefrom, in addition to such other powers as are now conferred by law upon receivers, and immediately after the sale of such property and confirmation thereof by the court, the purchaser shall be let into possession of such property; and in case of a surplus after satisfying such judgment or judgments, the same shall be paid over to the clerk of the court in which such action is pending, and shall be liable thereafter to the same extent as the property sold was liable, and if such surplus shall remain in the hands of said clerk, and no pro-

ceedings instituted to recover the same, or any portion thereof, for three years thereafter, the same, or such portion thereof, then remaining in the hands of said clerk, shall be paid over to the county treasurer of the county where such property shall be held or located and be credited to the school fund of the district or township in which such property is held or located, and shall be paid out by said county treasurer in like manner as other funds belonging to such district or township.

3398. Duty of the secretary of state. [Ch. 154, '90.] § 5. It shall be the duty of the secretary of this state on the application of persons for a charter to establish any corporation to require two applicants therefor to make oath or affirmation that such corporation is not being formed for the purpose of enabling several corporations to avoid the provisions of this act, and if such oath or affirmation is not satisfactory the secretary is authorized to withhold such charter.

NOTES TO SECTIONS OF STATUTES, VOL. I.

NOTES TO SECTIONS OF STATUTES, VOL. I.

33. Township officers not entitled to statutes at State expense. Dollard, Attorney-General, June 4, 1890. Such may be supplied at township expense. November 21, 1889.

97. Office of public examiner for southern district is the public examiner for the State of South Dakota. Dollard, Attorney-General, November 21, 1889.

192. In an action to compel the running of a daily train, an admission in the answer of the filing of the petition, the hearing thereon, the estimate of the expense of such service and the order made by the board, but expressly denying the truth of the matters set out in the petition, resolution, findings and order, and alleging that the business of the road did not warrant the running of such train, held to be such a denial as to put in issue all the material allegations of the petition, and judgment for the plaintiff on the pleadings could not be entered. State ex rel. Tompkins et al. v. Chicago, M. & St. P. Ry. Co., 77 N. W. 104.

Under section 19, chapter 110 of the Laws of 1897, it is doubtful whether the court could in any case enter judgment without first ascertaining the facts upon which the order of the commissioners was made. Id.

324. Principal and interest may be collected by action at law, by the State. Grigsby, Attorney-General, October 29, 1897.

348. A contract for interest in excess of 6 per cent. is void. Grigsby, Attorney-General, March 5, 1898.

Five hundred dollars is limit of loan to one person. Grigsby, Attorney-General, April 9, 1898.

When no demand is made for fund it is proper to purchase \$100,000 State warrant at 5 per cent. interest. Id.

353. This section applies to moneys recovered back for reinvestment as well as that apportioned to the county for investment. Grigsby, Attorney-General, December 31, 1897.

530. Article II, section 9, Constitution, chapter 108, Laws of 1890. A contract authorized by an appropriation by the Legislature for a certain purpose at a specified time constitutes a valid claim against the State notwithstanding the amount so appropriated has been used or applied to contracts for like purposes, at other periods, such misuse or misappropriation cannot affect the validity of a contract which the officers had the power to make. Van Dusen et al. v. State, 77 N. W. 201; Same v. Same, 77 N. W. 1118.

The furnishing of fuel for the agricultural college, under an appropriation specifically for such purpose, constitutes a legal claim against the State, and its validity is not impaired by the misuse of such appropriation in the payment of indebtedness contracted during another period. Van Dusen et al. v. State, 77 N. W. 201.

The burden of proof was on the plaintiff to show that the indebtedness was contracted at a time when the agents of the State were authorized to make such purchase. Id.

573. Lawful for Board of Regents to insure public buildings and use any funds under their control for that purpose. Grigsby, Attorney-General, November 4, 1897.

661. Chapter 84, section 15, Laws of 1881. This section is not abrogated by doctrine of the State Constitution which describes a new method of making appropriation. *Lyman County v. State*, 78 N. W. 17.

Where county has audited the claims and has issued its warrant for each item, it will be presumed that the items were carefully and honestly examined, and audited in amounts believed to be legal and reasonable. *Id.*

Expense of service of attorney in the prosecution of such actions is not a proper item of charge under such section. *Id.*

His expenses, however necessarily incurred in the prosecution, may be alleged. *Id.*

An intervening county claiming from the State a part of the amount of such costs on the ground that it has paid a portion thereof and has received the warrants of the county bringing the suit therefor is not entitled to any portion of such amount without surrendering such warrants. *Id.*

Presentation to the State Auditor, and his refusal are conditions precedent to the bringing of an action against the State therefor. *Id.*

724. A motion made by three attorneys, one of whom is admitted to practice in the Supreme Court, will be entertained, and a motion to strike out will be denied. When based upon the ground that two of such attorneys are not so authorized, the court will presume that the one qualified attorney was authorized to appear. *Anderson v. Hultman*, 80 N. W. 165.

An appeal cannot be taken from two separate and distinct appealable orders. *Id.*

Where it affirmably appears by the abstract that oral evidence was admitted on the hearing on the order appealed from which is not included in a bill of exceptions settled by the court or judge, the appeal will be dismissed. *Id.*

751. It is no part of the duty of the official stenographer to read his notes to the court. It is only his duty to extend such notes in longhand when his fees therefor have been paid. *Myers v. Campbell*, Judge, 78 N. W. 353.

763. Notary commission may be issued to woman possessing the necessary qualifications. *Dollard*, Attorney-General, February 17, 1890.

Woman to be notary public must be twenty-one years of age. *Crawford*, Attorney-General, November 21, 1893.

804. This section provides manner of voting in unorganized counties. *Dollard*, Attorney-General, August 4, 1890.

877. The commissioners have power to change boundaries of commissioner districts, only at times specified. A resolution providing for such change made in 1898 is void. *Van Den Bos v. Board of Commissioners*, Douglas County, 76 N. W. 935.

893. A complaint in an action for damages for breach of contract made by county commissioners in county having civil township organization with a landowner for land upon which to locate a highway not on section or quarter section line, to fence the highway where it ran through plaintiff's land, which does not show the precedent statutory requisites to have been complied with, is demurrable on the ground of *ultra vires*. *Meek v. Mead County*, 80 N. W. 182.

894. The county commissioners may, in good faith and for value, sell to an outgoing county officer and officially interested therein, outstanding, overdue and uncollectible notes belonging to the county, no consideration of public policy being invoked. *Brown County v. Jenkins et al.*, 77 N. W. 579.

933. Legal newspaper may have been published portion of fifty-two consecutive weeks in another county. *Crawford*, Attorney-General, March 30, 1893.

953. County treasurer entitled to no compensation for collecting fines, county institute funds or salary fees or fines. *Dollard*, Attorney-General, August 18, 1890.

County treasurer not entitled to commission on funds paid into salary fund from other officers. *Dollard*, Attorney-General, November 29, 1889.

County treasurer not entitled to commission for collecting school fund. *Dollard, Attorney-General, April 24, 1890.*

982. Where the board of equalization makes no assessment or return for a certain year the county auditor cannot recover for services performed the next or succeeding year. *Herron v. Lyman County, 78 N. W. 996.*

993. This section not abrogated by the Constitution. *Morgan v. State, 78 N. W. 19.*

1023. A person when elected to the office of county judge must be either admitted or entitled to be admitted without examination to practice as an attorney-at-law in this State. *Jamieson v. Wiggin, 30 N. W. 137.*

1048. This section repeals 6817 to 6826, the same being chapter 24 of the Laws of 1893. *State v. Sexton, 75 N. W. 895.* See 6817 to 6826, the same being chapter 50, Session Laws of 1899, rendering the same unconstitutional.

1052. Held constitutional. *Minnehaha County v. Thorne, 6 S. Dak. 449; 61 N. W. 688.*

1177. Supervisors may, at an adjourned meeting, act upon petition for location of public highway. *Issenheth v. Baum et al., 76 N. W. 928.*

A person who appears, without objection, waives defect, if any there be. Oral testimony admissible to show such fact. *Id.*

1299. A municipal corporation not criminally liable for violation of city ordinance, hence proceedings against the city for violation of police regulation are not governed by the rules of procedure in criminal cases. *City of Lead v. Klatt et al., 75 N. W. 896.*

1625. An abutting owner who owns the fee of the street has a right to construct therein an area, and use the same subject to the public easement. *Dell Rapids Mer. Co. v. City of Dell Rapids, 75 N. W. 898.*

Where city negligently constructs sewer so as to fill area with sewerage by reason of rain fall, the tenant may recover for the damage resulting therefrom, unless the negligence of the owner contributed to the damage. *Id.*

1635. Subsequent filing of certificate will entitle fire company to its proportion of tax where it has been by mistake or neglect omitted. *Grigsby, Attorney-General, August 27, 1897.*

1685. Upon collateral attack against a highway, the jurisdiction of the board to act is the only subject of inquiry. *Yankton County v. Klemisch, 76 N. W. 312.*

A recital in the petition that the petitioners are freeholders is sufficient against a contention that the findings of the commissioners do not show that fact. In absence of any showing to the contrary. *Id.*

An imperfect description is not available to one who has used the highway and acquiesced for years in the existence of the road. *Id.*

One contracting with the board of county commissioners in regard to the establishment of a highway is charged with notice of their powers and authority, and unless they proceed as prescribed by law, their acts do not bind the county. *Meek v. Mead County, 80 N. W. 182.*

A complaint for damages for breach of contract to fence the highway where it ran through plaintiff's land which does not show the precedent statutory requisites to have been complied with is demurrable on the ground of *ultra vires*. *Id.*

1703. A petition for a highway may be acted on at an adjourned meeting of the board. *Yankton County v. Klemisch, 76 N. W. 312.*

1800. Held constitutional. *Town of Dell Rapids v. Irving, 7 S. Dak. 310; 64 N. W. 149.*

1869. A person making the highest bid within half an hour after the opening of a session of the board of commissioners, and while but three of the five members had yet arrived at the place of meeting, is entitled to the license, though three members of the board had previously accepted the bid of another. *Wilson v. Gabler*, 76 N. W. 924.

No authority is given by this section for the grant of ferry license to one who does not secure rent, or execute a lease. *Id.*

1917. The sheriff is not entitled to the ten cents per mile provided to be paid in this section when summoning jurors, the five cents per mile in the next section is his entire mileage, and he can recover therefor only five cents per mile. *Neher v. McCook County*, 78 N. W. 998.

1918. The five cents per mile alleged in this section is all the mileage allowed for summoning jurors. *Neher v. McCook County*, 78 N. W. 998.

1926. First day is the return day of summons, and justice not entitled to charge per diem therefor. *Grigsby, Attorney-General*, April 26, 1898.

1980. In election contest where certain of the ballot-boxes used at an election were delivered to contestant, a candidate at such election, who opened them, and the contents of one of the boxes were not the same as when so delivered, contestant was not entitled to assail the official canvass of the votes on which a certificate of election was issued. *McMahon v. Crockett*, 80 N. W. 136.

1986. The board of canvassers have no power to refuse to make out certificates of election on the ground that persons voted for were not properly nominated. *Chamberlain v. Hedger et al.*, 80 N. W. 178.

It is no excuse for refusing to canvass returns and issue a certificate of election that such act would be idle and that there were no nominations as prescribed by law as the person to whom the certificate of election is issued is clothed with the *prima facie* right to the office. *Id.*

2028. Voters in unorganized counties cannot vote for county officers in county to which said county is annexed. *Dollard, Attorney-General*, September 3, 1890.

2040a. 1544. C. L. Description of real property as: "S. 2. S. E. & S. 2. S. W. Sec. or lot 30 Twp. or Blk. 113, Rng. 69" insufficient description for purpose of taxation. *Turner v. Hand County*, 77 N. W. 589.

2134. Government employees taxable as other individuals. *Grigsby, Attorney-General*, July 17, 1897.

Indians who have become citizens are taxable as other persons. *Grigsby, Attorney-General*, July 17, 1897.

2140. Bounty for tree planting and claim of exemption from taxation cannot be claimed upon same trees. *Crawford, Attorney-General*, August 4, 1893.

2193. This section is unconstitutional, in conflict with section 2, article II, Constitution. *Grigsby, Attorney-General*, August 10, 1897.

2221. Receipt for taxes of the year 1890, issued in 1891, is not conclusive evidence of payment of prior taxes. *Danforth v. McCook County*, 76 N. W. 941. This section was first enacted in chapter 14 of the Session Laws of 1891, and not retroactive. *Id.*

This section does not apply to a certificate of redemption from a tax sale. *Id.*

2248. Tax not void by reason of failure to make statement. *Danforth v. McCook County et al.*, 76 N. W. 940.

2222. A timber-culture claim is subject to levy for prior personal taxes, due from the settler after the issuance of final receipt. *Danforth v. McCook County, et al.*, 76 N. W. 941.

Such claims are not exempt from taxation under United States Statutes 1878, chapter 190, section 4, exempting timber-culture claims from debts contracted prior to issuance of the final certificate. *Id.*

Action will not lie for collection of taxes on personal property, it not being authorized by statute, the only remedy is by distress and sale. *Hanson County v. Gray*, 80 N. W. 175.

No action can be maintained by the county to recover taxes. Taxes are not debts, and can be enforced only by distress and sale. *Brule County v. King*, 77 N. W. 107.

An action upon a contract between the debtor and the county, whereby the property seized was released, and his liability for such tax to be determined by the court, is an action to recover the taxes and not an action for a debt. *Id.*

An agreement between the taxpayer and the county for the release of property seized under attachment, and to submit legality of the tax, and the liability of the taxpayer therefor to the court is void, and cannot be enforced. *Id.*

In absence of lien personal property cannot be sold for taxes and released thereby from incumbrance upon it. *Dollard, Attorney-General*, November 29, 1889.

2257. The treasurer is entitled to collect and the county to pay ten cents for each tract advertised. *Grigsby, Attorney-General*, September 28, 1897.

2309. No levy to cover expense of collecting or levying tax can be made. *Grigsby, Attorney-General*, January 12, 1898.

2319. A finding that the property had been assessed and certain taxes levied thereon, which had not been paid in a proper action based upon tax deed authorizes the court to render judgment for the amount of such taxes. *Clark v. Darlington*, 78 N. W. 997.

A finding that defendant purchased a certificate of tax sale from the county, and paid the subsequent taxes, and is the owner of the certificate and liens together with the conclusion that he is entitled to judgment declaring the amount of taxes so paid a just lien on the property described, is a sufficient finding that the taxes were a valid lien. *Id.*

2428. Teacher's certificate cannot be revoked for failure to attend teachers' institute, nor can contracts be affected thereby. *Crawford, Attorney-General*, March 3, 1893.

2511. Women may vote at elections for school purposes — at bond elections as well. *Dollard, Attorney-General*, August 25, 1889.

2517. District officers being authorized to issue bonds, but may substitute therefor bonds specifying a different place of payment, the reissued bonds being identical in amount with those cancelled. *Kunz v. School District*, 79 N. W. 844.

2557. The word "towns" does not include townships. *Grigsby, Attorney-General*, May 28, 1897.

2558. School boards in cities and towns and independent districts may provide for additional text books. *Grigsby, Attorney-General*, May 28, 1897.

This section controls, rather than next section, the limitations in price. *Id.*

2559. Members of county board of equalization who do not receive other compensation may be allowed reasonable per diem by board of county commissioners. *Grigsby, Attorney-General*, May 28, 1897.

2561. Depositories may be named at any time reasonably consistent with this act. Grigsby, Attorney-General, May 28, 1897.

2569. Where bonds are issued in excess of the amount allowed by statute for the construction of a schoolhouse which has been retained by the school district and used, the holders of such bonds may recover as on a *quantum meruit* the value of the schoolhouse erected. *Livingston v. School district No. 7, Brookings County*, 76 N. W. 301.

In such action it is proper to allege the successive preliminary steps taken by the school board in strict conformity with the act authorizing the bonds so that the court may have jurisdiction of the entire matter. *Id.*

2638. Men and officers are not entitled to pay except when in active service. Crawford, Attorney-General, March 13, 1893.

2658. The citizenship of a locator and his rights to a mining claim dependent thereon cannot be questioned in an action between him and other individuals to determine adverse claims to mining property. *McCarthy v. Speed et al.*, 77 N. W. 590.

2660. The owner of an unpatented placer claim, or another with his consent, can locate a lode claim within the boundaries of the placer claim. *McCarthy v. Speed et al.*, 77 N. W. 590.

Persons who locate a lode claim and record their location certificate are estopped, as against one to whom they sell an interest in the claim, after an examination of the records, to assert that there was no discovery to support the location. *McCarthy v. Speed et al.*, 77 N. W. 590.

2668. One of the cotenants of a mining claim who on the annual assessment work thereon not being done, relocating the same, holds it as trustee for all the cotenants notwithstanding Revised Statutes U. S., § 2324, providing that on the failure to comply with the conditions as to labor or improvements the claim shall be open to relocation in the same manner as if no location of the same had ever been made. *McCarthy v. Speed et al.*, 77 N. W. 590.

2768. Subdivision 3, section 15, chapter 14, Laws of 1889, providing for a direct artesian-well assessment on lands for construction of such a well and watercourses violates the constitutional provision requiring all taxes to be imposed according to the value of the property equally and uniformly. *Turner v. Hand County*, 77 N. W. 589.

2813. Chapter 80, Laws of 1891, entitled "An act authorizing civil townships to sink artesian wells for public purposes and to issue bonds therefor," which authorizes townships to sink artesian wells at public expense, the water to be placed in tanks in public highways, to supply the general public for watering stock and other domestic purposes, and to be used for irrigation, sufficiently expresses its subject in its title. *Miles v. Benton Township et al.*, 78 N. W. 1004.

2814. Artesian wells sunk by townships at the expense of taxpayers, the water to be placed in tanks in the public highways to supply the general public for watering stock and other uses is for a public purpose, and such law is not unconstitutional, and the tax levied therefor is valid. *Miles v. Benton Township et al.*, 78 N. W. 1004.

2892. To compel receiving of patient, the warrant must recite all necessary proceedings with reference thereto. Grigsby, Attorney-General, September 20, 1897.

2899. County judge must turn fees hereby provided for over to county treasurer. Grigsby, Attorney-General, April 26, 1898.

2997. Commissioners of insanity are to determine actual settlement of patient. Grigsby, Attorney-General, December 23, 1897.

3010. Article 27 of the Constitution, adopted in 1899, is not sole executing or prohibitory, and its adoption did not operate to repeal the existing license statutes, nor will it be effective for such purpose until it is carried into force by appropriate legislation. State v. Bradford, 80 N. W. 143.

Liquor license is a police regulation, therefore not in violation of article II of the Constitution. State v. Buechler, 10 S. Dak. 156; 72 N. W. 114.

3020. This section prohibits the sale of intoxicating liquors, under all circumstances, to a person in the habit of becoming intoxicated, and written notice by the wife is not necessary to establish her rights, under section 3025, for such sale to her husband, he being a person with such a habit. Sandige v. Widmann et al., 80 N. W. 164.

3031. Township board may levy and collect license. Grigsby, Attorney-General, September 30, 1897.

3065. Secretary of State entitled to 20 per cent. of fees. Not to be turned into State Treasury. Grigsby, Attorney-General, September 3, 1898.

3296. Bounty for tree planting and claim of exemption cannot be claimed upon same trees. Crawford, Attorney-General, August 4, 1893.

3324. Chapter 102 of the Laws of 1897 violates the interstate commerce clause of the Constitution of the United States, so far as it relates to the selling of clothing by sample, to be made up from measurements taken by the salesman, although there is no discrimination as to the amount of the fee between resident and nonresident establishments. State v. Rankin, 76 N. W. 299.

Ex. G. 1113

